(22,730)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 323.

THE FARMERS & MECHANICS SAVINGS BANK OF MINNEAPOLIS, PLAINTIFF IN ERROR,

vs.

THE STATE OF MINNESOTA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 31, 1913.

No. 16767.

State of Minnesota Supreme Court.

STATE OF MINNESOTA, Plaintiff,
against
THE FARMERS AND MECHANICS SAVINGS BANK OF MINNEAPOLIS,
Defendant.

Certificate and Return of the Clerk of the District Court, Fourth Judicial District.

Claude B. Leonard and William A. Lancaster, Attorneys for Appellant, Minneapolis, Minn.
Elmer W. Gray, Attorney for Respondent, Minneapolis, Minn.

(Endorsed:) Filed Aug. 13, 1910. I. A. Caswell, Clerk.

STATE OF MINNESOTA,
County of Hennepin:

District Court, Fourth Judicial District.

STATE OF MINNESOTA, Plaintiff,
vs.
THE FARMERS AND MECHANICS SAVINGS BANK OF MINNEAPOLIS,
Defendant.

Stipulation.

It is hereby stipulated that a list of all personal property taxes for the year 1908 remaining delinquent April 1, 1909, in Hennepin County, Minnesota, was duly made and certified by the treasurer of said county as required by Section 889, Revised Laws 1905; that said delinquent personal tax list was received and filed in the office of the clerk of said district court April 6, 1909; that it appears from said list that the personal property tax assessed and levied against the above named defendant for the year 1908 amounted to $4,197.19 and that the same with added penalty of $419.72, making a total of $4,616.91, was delinquent and unpaid.

Dated July 29, 1910.

ELMER W. GRAY,
Assistant County Attorney.
CLAUDE B. LEONARD,
Attorney for Defendant.

(Endorsed:) Filed July 29, 1910. A. E. Allen, clerk, by F. S. Cady, deputy.

Answer.

STATE OF MINNESOTA,
County of Hennepin:

District Court, Fourth Judicial District.

STATE OF MINNESOTA, Plaintiff,
vs.
THE FARMERS AND MECHANICS SAVINGS BANK OF MINNEAPOLIS, Defendant.

Reassessment of Personal Property Tax for the Year 1908.

Now comes The Farmers and Mechanics Savings Bank of Minneapolis and for answer in the above proceeding and matter, alleges:

That it is a corporation organized and existing under and by virtue of the Mutual Savings Bank Law of the State of Minnesota known as Chapter 109 of the Laws of 1879 and the several laws amendatory thereof and supplemental thereto, and having its place of business in the fifth ward of the city of Minneapolis in said county and state.

That pursuant to the provisions of sections 835 and 839
4 Revised Laws of Minnesota 1905, this defendant duly listed its property and credits and made full return thereof to the Assessor of the City of Minneapolis for the purpose of personal property taxation for the year 1908 and also by its accounting officer made out and delivered to said assessor a sworn statement for the purposes of such taxation, as by said section 839 required, reference to which list and statement of personal property now on file in the office of said Assessor is hereby made as a part hereof.

That by such list and sworn statement it appeared that this defendant owned no personal property subject to taxation for said year.

That said Assessor wholly disregarded said list and statement and arbitrarily, unfairly, unequally and unjustly assessed the personal property of this defendant upon a valuation of one hundred fifty-one thousand two hundred fifty ($151,250.00) dollars.

That pursuant to such assessment, a tax of $4,197.19 was levied upon the personal property of this defendant for the year 1908.

That said assessment was illegal and grossly excessive.

That of the personal property of this defendant, on May 1, 1908, mortgages to the amount of $161,650.00 on which the special mortgage tax has been paid and municipal bonds of political subdivisions of the United States to the amount of $701,100.00 were exempt from assessment and taxation.

That after deducting all its personal property included
5 under items 7 and 8 of Section 839, Revised Laws of Minnesota 1905, the value of all its real estate (which is listed and assessed as other real estate) and the value of all of its mortgages and bonds exempt from personal property taxation as aforesaid from the value of all property owned by it and included under items 1 to 6,

both inclusive of said Section 839, no property remained on May 1, 1908, in the possession, ownership or control of this defendant subject to assessment or taxation as personal property.

That this defendant duly made complaint of said arbitrary and illegal assessment before the Board of Equalization of the City of Minneapolis and attempted to procure said Board to review and to correct the same.

That said Board refused to take such action or to correct or change said assessment.

That such refusal was prejudicial error on the part of said Board.

Wherefore, this defendant prays that said assessment may be decreed to be illegal and void and that the same may be vacated and set aside and said personal property tax annulled and for such other and further relief as may be just in the premises.

Dated at Minneapolis, Minnesota, April 10, 1909.

CLAUDE B. LEONARD,
Attorney for Defendant.

115 South Fourth St., Minneapolis, Minn.

6 STATE OF MINNESOTA,
County of Hennepin, ss:

N. F. Hawley, being first duly sworn, says he is the Treasurer of the Farmers and Mechanics Savings Bank of Minneapolis; that he has heard the foregoing answer read and knows the contents thereof; that the same is true, except as to matters therein stated upon information and belief, and that as to those matters he believes it to be true.

N. F. HAWLEY.

Subscribed and sworn to before me this 20th day of April, A. D. 1909.

[NOTARIAL SEAL.] CLAUD B. LEONARD,
Notary Public, Hennepin County, Minn.

My commission expires Oct. 9, 1910.

(Endorsed:) Filed April 20, 1909. A. E. Allen, Clerk. By F. S. Cady, Deputy.

7 STATE OF MINNESOTA,
County of Hennepin:

District Court, Fourth Judicial District.

STATE OF MINNESOTA, Plaintiff,
vs.
THE FARMERS AND MECHANICS SAVINGS BANK OF MINNEAPOLIS, Defendant.

Findings of Fact and Conclusions of Law.

Proceedings to Enforce the Collection of Personal Property Taxes for the Year 1908.

The above entitled proceedings came regularly on for trial and *was* tried on the 29th day of September, 1909, before the undersigned, one of the judges of the above entitled court. Elmer W. Gray, Asst. County Attorney, appeared for plaintiff and Claude B. Leonard, Esq., appeared as attorney for the defendant.

After hearing the evidence introduced in open court and being fully advised in the premises, the court finds the following facts:

The defendant during the year 1908, and for a long time prior thereto, was a corporation organized and existing under and by virtue of the Mutual Savings Bank Law of the State of Minnesota, and had no capital represented by shares of stock. During the year 1908, and long prior thereto, defendant's principal place of business was in the Fifth Ward of the City of Minneapolis, Hennepin County, Minnesota. On May 1st, 1908, the defendant made and transmitted to the City Assessor of the City of Minneapolis a sworn statement as required by Section 839 Revised Laws of the State of Minnesota, 1905. That the defendant omitted from said statement all mortgages upon real estate in the State of Minnesota, then owned by the defendant, on which the mortgage registration
8 tax had been paid and also bonds of the United States and bonds issued by municipalities of Indian Territory and municipalities of the Territory of Oklahoma.

The assets and liabilities as shown in the statement furnished by defendant to the City Assessor was as follows:

Personal property assets		$11,089,066.02
Due depositors	$11,416,050.27	
Accounts payable	250,000.00	
		11,666,*066.02*

Thereafter the City Assessor of the City of Minneapolis made an arbitrary assessment against the defendant as follows:

Office furniture	$2,500
Credits	147,500
Total	$150,000

That thereafter the defendant made application to the Board of Equalization of the City of Minneapolis to correct said assessment and the said Board refused to make any change thereof.

That thereafter the State Board of Equalization raised said assessment on the office furniture of defendant fifty per cent. so that the total assessment was finally determined and fixed in the sum of $151,250.

That the rate of taxation in the Fifth Ward in the City of Minneapolis for the year 1908 was the sum of 27¾ mills on the dollar. And there was regularly and duly levied a personal property tax, on said assessment, against the defendant for the year 1908, in
9 the sum of $4,197.19, and the same is wholly unpaid.

That on May 1st, 1908, the defendant was the owner of notes and credits amounting to the sum of $161,650.00, secured by mortgages on Minnesota real estate upon which the registration tax required by Chapter 328 Laws of 1907 had been paid.

That on May 1st, 1908, the defendant also owned and possessed bonds issued by municipalities of Indian Territory of the value of $278,000
And bonds issued by municipalities of the Territory of Oklahoma of the value of..... 423,100

Total bonds as above 701,100
Mortgages of Minnesota as above..... 161,650

Total 862,750

This amount, $862,750, and no part thereof was included in the sworn statement given by the defendant to the City Assessor as hereinbefore mentioned.

That the assets of the defendant May 1st, 1908, and as per defendant's sworn statement were..... $11,089,066.02
Plus Territorial bonds and Minnesota Mortgages.. 862,750.00

Total assets of Bank May 1st, 1908..... 11,951,816.02
Less the amount of liabilities..... 11,666,050.27

Leaving an actual balance or surplus May 1, 1908, of $285,765.75

10 That on May 1st, 1908, the defendant owned and possessed in its said place of business in the City of Minneapolis, Minnesota, office furniture of the value of $5,000. That defendant also owned on said day a considerable amount of real estate upon which it pays taxes as other owners.

Conclusions of Law.

That the State of Minnesota is entitled to judgment against the defendant for the sum of $4,197.19, a penalty of ten per cent. being $419.72, and for plaintiff's costs and disbursements herein.

Let judgment be entered accordingly.
By the Court:

JOHN DAY SMITH, *Judge.*

Dated April 6, 1910.

(Endorsed:) Filed April 8, 1910. A. E. Allen, Clerk. By F. S. Cody, Deputy.

11 STATE OF MINNESOTA,
County of Hennepin:

District Court, Fourth Judicial District.

STATE OF MINNESOTA, Plaintiff,
vs.
THE FARMERS AND MECHANICS SAVINGS BANK OF MINNEAPOLIS, Defendant.

Notice of Proposed Case.

SIR: You will please take notice that the following is a copy of the case proposed in behalf of the defendant herein.
Dated May 17, 1910.

CLAUDE B. LEONARD,
Attorney for Defendant.

To Elmer W. Gray, Esq., Assistant County Attorney.

12 STATE OF MINNESOTA,
County of Hennepin:

District Court, Fourth Judicial District.

STATE OF MINNESOTA, Plaintiff,
vs.
THE FARMERS AND MECHANICS SAVINGS BANK OF MINNEAPOLIS, Defendant.

Proposed Case.

This action came on regularly for trial at the September, 1909, general term and was tried on the 29th day of September, 1909, before the Honorable John Day Smith, one of the judges of said court, sitting without a jury. Elmer W. Gray, Esq., Assistant County Attorney, appeared for the plaintiff and Claude B. Leonard, Esq., appeared as attorney for the defendant, whereupon the following proceedings were had, to-wit:

13 It was stipulated in open court by the attorneys representing the respective parties "That the allegations of defendant's answer contained in folios No. 2 and 3 thereof are true; that the following is a true copy of the list and statement submitted by de-

fendant to the Assessor for the purpose of personal property taxation for the year 1908:

Statement to Assessor.

"Statement of The Farmers and Mechanics Savings Bank of Minneapolis.

To the City Assessor of the City of Minneapolis:

The undersigned, The Farmers and Mechanics Savings Bank of Minneapolis, is a mutual savings bank organized under the general savings bank laws of the State of Minnesota and is without capital or capital stock.

Conformably to Section 839 of the Revised Laws of Minnesota 1905, said bank herewith submits the following list or statement of the personal property belonging to The Farmers and Mechanics Savings Bank of Minneapolis on the 1st day of May, 1908, to-wit:

14

1. Amount of money on hand or in transit.....		$28,953.05
2. Amount of funds in other banks subject to draft.		610,994.38
3. Amount of checks or cash items not included in either of the preceding items.....		4,269.68
4. Amount of bills receivable	$4,600.00	
Fol. 5. Other credits due or to become due, viz.—Mortgages on real estate, excepting mortgages upon real estate in the State of Minnesota upon which the mortgage registration tax has been paid and which are exempt from other taxation in pursuance of Chapter 328, Laws of Minnesota 1907	2,533,311.00	
Interest accrued but not due and interest due but not paid (estimated).	135,000.00	
		2,672,911.00
5. Amount of bonds (the bank has no stocks of any kind) excepting bonds of the United States and of political subdivisions thereof—value...		7,766,937.91
6. All other property appertaining to the business of said bank other than real estate and exempt bonds and mortgages excepted as aforesaid, to-wit:—Furniture, furnishings, etc.....		$5,000.00
Fol. 6. 7. Amount of all deposits made with said bank by other persons.....		11,416,050.27
8. Amount of accounts payable other than current deposit accounts.....		250,000.00

THE FARMERS AND MECHANICS SAVINGS BANK OF MINNEAPOLIS,
By N. F. HAWLEY, *Treasurer.*"

(Duly verified.)

15 That thereafter the city assessor of the City of Minneapolis made an arbitrary assessment against the defendant as follows:

Office furniture	$2,500
Credits	147,500
Total	$150,000

That thereafter said defendant made application to the board of equalization of the City of Minneapolis to correct such assessment and submitted to said board a statement of which the following is a true copy:

Application to City Board of Equalization.

"To the Board of Equalization of the City of Minneapolis.

GENTLEMEN: Now comes The Farmers and Mechanics Savings Bank of Minneapolis and respectfully states that it is a mutual savings bank organized and existing under the laws of the State of Minnesota and having its place of business in the City of Minneapolis in said state; that as such, it has no capital stock or stockholders; that, while it is required to and does pay taxes upon the full assessed value of its real estate in the same manner as other owners of land, it is not required, as such mutual savings bank, to be assessed under the law applicable to general corporations but under the separate and distinct provision of the general laws of the state relating to savings banks, namely, Section 839, Revised
16 Laws of 1905, except in so far as said section is modified by Chapter 328 Laws of 1907, relating to the taxation of mortgages on real estate; that a large portion of the assets of this savings bank are invested in mortgages on real estate upon which the full tax has been paid, as required by said Chapter 328, Laws of 1907, and in bonds which are exempt from taxation, under Section 839, Revised Laws 1905.

This corporation further states that heretofore, as required by law, it duly made and delivered to the assessor of the City of Minneapolis a sworn statement and list of its personal property subject to taxation in strict compliance with Section 839, Revised Laws 1905, reference to which statement now on file in the office of said assessor is hereby made; that said assessor disregarding said verified list, has arbitrarily and without notice assessed this corporation upon its personal property for the year 1908 at the sum of $150,000 and that it is believed that this corporation will suffer an injustice unless such assessment is corrected.

Wherefore, The Farmers and Mechanics Savings Bank of Minneapolis prays that said assessment be corrected to conform to said verified list and abated.

Dated July 17th, 1908.

THE FARMERS AND MECHANICS SAVINGS BANK OF MINNEAPOLIS,
By N. F. HAWLEY, *Treasurer.*"

That said board refused to make any change therein;
17 That thereafter the state board of equalization raised said assessment on office furniture 50% so that the total assess-

ment was finally determined and fixed in the sum of $151,250; that the rate of taxation in the Fifth Ward of the City of Minneapolis for the year 1908 was 27¾ mills on the dollar; that a personal property tax was levied under said assessment against said defendant for the year 1908 for the sum of $4,197.19 and that no part thereof has been paid;

That on the first day of May, 1908, the defendant owned Minnesota farm mortgages upon which the registration tax had been paid, pursuant to Chapter 328, Laws of 1907, valued at $13,900, and Minnesota city mortgages upon which said registration tax had been paid valued at $147,750, amounting to the sum of $161,650; that on said day said defendant owned bonds issued by municipalities in Indian Territory valued at $278,000 and bonds issued by municipalities in Oklahoma Territory valued at $423,100, making a total value of such bonds of $701,100, making a grand total of $862,750 in value of personal property which was not included in said return to the assessor, the same being the amounts therein referred to as exempt from taxation; that had said return made to the assessor been amended to include the aforesaid items claimed to be exempt, the same would have read as follows:

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1 2 3 Cash items, as before		$644,217.11
4. Bills receivable, as before	$4,600.00	
Mortgages, as before	2,533,311.00	
Farm mortgages on which the registration tax, pursuant to Chapter 328, Minn. Laws 1907, had been paid and which are claimed to be exempt.	13,900.00	
City mortgages (on which said registration tax has been paid and claimed to be exempt)	147,750.00	
Total mortgages	2,694,961.00	
Interest, as before	135,000.00	
		2,834,561.00
5. Bonds, as before	7,101,688.35	
Bonds issued by municipalities of Indian Territory claimed as exempt	278,000.00	
Bonds issued by municipalities of Oklahoma Territory claimed as exempt	423,100.00	
Total bonds	7,802,788.35	
Premium, as before	665,249.56	
		8,468,037.91
6. All other property as before		5,000.00
		11,951,816.02
7 8 Liabilities, as before		11,666,050.27
Leaving an actual balance of		$285,765.75

That said statement returned to the assessor, as amended by the addition of said mortgages and municipal bonds claimed to be exempt from taxation, is a full and true statement of the personal property and liabilities of defendant on May 1, 1908, but excludes all real estate.

That this case may be tried and submitted on the foregoing statements of fact."

Thereupon, the case having been argued and submitted, the court made and filed on the 8th day of April, 1910, the following findings of fact and conclusions of law:

STATE OF MINNESOTA,
County of Hennepin:

District Court, Fourth Judicial District.

STATE OF MINNESOTA, Plaintiff,
vs.
THE FARMERS AND MECHANICS SAVINGS BANK OF MINNEAPOLIS, Defendant.

Proceedings to Enforce the Collection of Personal Property Taxes for the Year 1908.

The above entitled proceedinngs came regularly on for trial and was tried on the 29th day of September, 1909, before the undersigned, one of the Judges of the above entitled court. Elmer W. Gray, Ass't County Attorney, appeared for the plaintiff, and Claude B. Leonard, Esq., appeared as Attorney for the defendant.

After hearing the evidence introduced in open court and being fully advised in the premises, the court finds the following facts.

The defendant during the year 1908, and for a long time prior thereto was a corporation organized and existing under and by virtue of the Mutual Savings Bank Law of the State of Minnesota, and had no capital represented by shares of stock. During the year 1908, and long prior thereto, defendant's principal place of business was in the Fifth Ward of the City of Minneapolis, Hennepin County, Minnesota. On May 1st, 1908, the defendant made and transmitted to the City Assessor of the City of Minneapolis, a sworn statement as required by Section 839, Revised Laws of the State of Minnesota, 1905. That the defendant omitted from said statement all mortgages upon real estate in the State of Minnesota, then owned by the defendant, on which the mortgage registration tax had been paid, and also bonds of the United States and bonds issued by municipalities of Indian Territory and municipalities of the Territory of Oklahoma.

The assets and liabilities as shown in the statement furnished by defendant to the City Assessor was as follows:

Personal property assets		$11,089,066.02
Due depositors	$11,416,050.27	
Accounts payable	250,000.00	
		$11,666,066.02

Thereafter the City Assessor of the City of Minneapolis made an arbitrary assessment against the defendant as follows:

Office furniture	$2,500
Credits	147,500
Total	$150,000

That thereafter the defendant made application to the Board of Equalization of the City of Minneapolis to correct said assessment, and the said Board refused to make any change thereof.

That thereafter the State Board of Equalization raised said assessment on the office furniture of defendant fifty per cent., so that the total assessment was finally determined and fixed in the sum of $151,250.

22 That the rate of taxation in the Fifth Ward in the City of Minneapolis for the year 1908 was the sum of 27¾ mills on the dollar. And there was regularly and duly levied a personal property tax on said assessment against the defendant for the year 1908, in the sum of $4,197.19, and the same is wholly unpaid.

That on May 1st, 1908, the defendant was the owner of notes and credits amounting to the sum of $161,650.00, secured by mortgages on Minnesota real estate upon which the registration tax required by Chapter 328 Laws of 1907 has been paid.

That on May 1st, 1908, the defendant also owned and possessed bonds issued by municipalities of Indian Territory of the value of $278,000 and bonds issued by municipalities of the Territory of Oklahoma of the value of 423,100

Total bonds as above	701,100
Mortgages of Minnesota as above	161,650
Total	862,750

This amount, $862,750, and no part thereof was included in the sworn statement given by the defendant to the City Assessor, as hereinbefore mentioned.

23 That the assets of the defendant May 1st, 1908, and as per defendant's sworn statement were $11,089,066.02

Plus Territorial bonds and Minnesota mortgages	862,750.00
Total assets of Bank May 1st, 1908	$11,951,816.02
Less the amount of liabilities	11,666,050.27
Leaving an actual balance or surplus May 1, 1908, of	$285,765.75

That on May 1st, 1908, the defendant owned and possessed in its said place of business in the City of Minneapolis, Minnesota, office furniture of the value of $5,000. That defendant also owned on said day a considerable amount of real estate upon which it pays taxes as other owners.

Conclusions of Law.

That the State of Minnesota is entitled to judgment against the defendant for the sum of $4,197.19, a penalty of ten per cent being $419.72, and for plaintiff's costs and disbursements herein.

Let judgment be entered accordingly.

By the Court,

JOHN DAY SMITH, *Judge.*"

Dated April 6, 1910.

The plaintiff proposes no amendments to the foregoing case and hereby consents that the same may be forthwith settled by the Court as proposed without notice.

Dated Minneapolis, Minnesota, May 31st, 1910.

ELMER W. GRAY,
Assistant County Attorney.

24 STATE OF MINNESOTA,
County of Hennepin:

District Court, Fourth Judicial District.

STATE OF MINNESOTA, Plaintiff,
vs.
THE FARMERS AND MECHANICS SAVINGS BANK OF MINNEAPOLIS,
Defendant.

The foregoing case, having been examined by me and found conformable to the truth, is hereby settled and allowed and I hereby order that the same be made a part of the record in this action. I hereby certify that said case contains all the evidence offered and received and all the proceedings had upon the trial of said case.

Dated June 23rd, 1910.

JOHN DAY SMITH, *Judge.*

(Endorsed:) Filed June 28, 1910. A. E. Allen, Clerk, by F. S. Cady, Deputy.

25 STATE OF MINNESOTA,
County of Hennepin:

District Court, Fourth Judicial District.

STATE OF MINNESOTA, Plaintiff,
vs.
THE FARMERS AND MECHANICS SAVINGS BANK OF MINNEAPOLIS,
Defendant.

Notice of Motion for New Trial.

SIR: You will please take notice that at the special term of the above named court to be held at the City of Minneapolis in the

County of Hennepin and State of Minnesota on the 2nd day of July, A. D. 1910, upon the opening of the court upon said day or as soon thereafter as counsel can be heard, the defendant in the above entitled action will move the court for an order setting aside and vacating its decision of date April 6th, 1910, filed in said action April 8, 1910, and granting a new trial of said action; that said motion will be made on defendant's answer and the settled case in said action; that said motion will be made on the following grounds:

That said decision is not justified by the evidence and is contrary to law.

Dated June 22, 1910.

CLAUDE B. LEONARD,
Attorney for Defendant.

To Elmer W. Gray, Attorney for Plaintiff.

It is hereby stipulated that the foregoing motion may be heard forthwith at Chambers by the Hon. John Day Smith, one of the judges of said court, notice and time being expressly waived.

Dated June 22, 1910.

ELMER W. GRAY,
Assistant County Attorney.
CLAUDE B. LEONARD,
Attorney for Defendant.

(Endorsed:) Filed June 28, 1910. A. E. Allen, Clerk, by F. S. Cady, Deputy.

26 STATE OF MINNESOTA,
County of Hennepin:

District Court, Fourth Judicial District.

STATE OF MINNESOTA, Plaintiff,
vs.
THE FARMERS AND MECHANICS SAVINGS BANK OF MINNEAPOLIS, Defendant.

Order Denying Motion for New Trial.

The above entitled action having come on for hearing at Chambers on Wednesday, the 23rd day of June, 1910, pursuant to stipulation, and upon a motion for a new trial on the part of the defendant herein and after hearing Claude B. Leonard, Esq., attorney for the defendant, in support of said motion and Elmer W. Gray, Esq., attorney for plaintiff, in opposition,

Ordered, that said motion be and the same hereby is denied.

Dated June 23, 1910.

JOHN DAY SMITH, *Judge.*

(Endorsed:) Filed June 28, 1910. A. E. Allen, Clerk, by F. S. Cady, Deputy.

27 STATE OF MINNESOTA,
County of Hennepin:

District Court, Fourth Judicial District.

STATE OF MINNESOTA, Plaintiff,
vs.
THE FARMERS AND MECHANICS SAVINGS BANK OF MINNEAPOLIS, Defendant.

Notice of Appeal.

To Elmer W. Gray, Esq., Assistant County Attorney and Attorney for the County Commissioners of Hennepin County, Minnesota, and to A. E. Allen, Esq., Clerk of the aforesaid District Court.

GENTLEMEN: Please take notice that the above named defendant, The Farmers and Mechanics Savings Bank of Minneapolis, appeals to the Supreme Court of the State of Minnesota from an order of said District Court entered and filed in said action on the 28th day of June, 1910, denying its motion for an order setting aside the decision of date April 6th, 1910, filed in said action April 8th, 1910, and for a new trial of said action and from the whole thereof.

Dated June 28, 1910.

CLAUDE B. LEONARD,
Attorney for Defendant.
WILLIAM A. LANCASTER,
Of Counsel.

(Endorsed:) Filed June 28, 1910. A. E. Allen, Clerk. F. S. Cady, Deputy.

(Endorsed on back.)

Due service of the within notice of appeal is hereby admitted this 28th day of June, 1910.

ELMER W. GRAY,
Assistant County Attorney and Attorney for County Commissioners.
A. E. ALLEN,
Clerk of District Court.
By FRED S. CADY, *Deputy.*

28 STATE OF MINNESOTA,
County of Hennepin:

District Court, Fourth Judicial District.

STATE OF MINNESOTA, Plaintiff,
vs.
THE FARMERS AND MECHANICS SAVINGS BANK OF MINNEAPOLIS,
Defendant.

Stipulation.

It is hereby stipulated that the appeal taken by the defendant, The Farmers and Mechanics Savings Bank of Minneapolis, from the order denying a new trial in the above entitled action shall stay all proceedings thereon and that said defendant shall not be required to make any deposit or execute or file any bond for costs or supersedeas bond on such appeal. Such deposit or bond being hereby expressly waived.

Dated June 28th, 1910.

CLAUDE B. LEONARD,
Attorney for Defendant.
WILLIAM A. LANCASTER,
Of Counsel.
ELMER W. GRAY,
Assistant County Attorney.

(Endorsed:) Filed June 28, 1910. A. E. Allen, Clerk. By F. S. Cady, Deputy.

29 STATE OF MINNESOTA,
County of Hennepin, ss:

District Court, Fourth Judicial District.

I, A. E. Allen, Clerk of the above named Court, do hereby certify and return to the Supreme Court of the State of Minnesota, that I have compared the papers writing to which this certificate is attached with the original Stipulation; Answer; Findings and Order for Judgment; Notice of Proposed Case; Proposed Case and Order settling and allowing same; Notice of Motion for New Trial; Order Denying Motion for New Trial; Notice of Appeal to Supreme Court, and Stipulation, in the action therein entitled, as the same appear of record and on file in the said Clerk's office, at the Court House in said Hennepin County, Minnesota, and find the same to be true and correct thereof, and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said District Court, at the City of Minneapolis, in said County, this 9th day of August, A. D. 1910.

[SEAL.]

A. E. ALLEN,
Clerk of District Court,
By B. NIEZALEWSKI, *Deputy.*

30 16767. State of Minnesota. In Supreme Court, October Term, A. D. 1910. State of Minnesota, Respondent, vs. The Farmers and Mechanics Savings Bank of Minneapolis, Appellant. Assignment of Errors. Claude B. Leonard, Attorney for Appellant, Minneapolis, Minn. Wm. A. Lancaster, Of Counsel.

(Endorsed:) Filed Jan. 10, 1911. I. A. Caswell, Clerk.

31 STATE OF MINNESOTA:

In Supreme Court, October Term, A. D. 1910.

STATE OF MINNESOTA, Respondent,
vs.
THE FARMERS AND MECHANICS SAVINGS BANK OF MINNEAPOLIS, Appellant.

Assignment of Errors.

I.

The Court erred in its Findings of Fact in including in the assets of the appellant the total face value of Mortgages upon real estate, in the State of Minnesota, upon which the appellant had paid the tax as required by Chapter 328, Laws of 1907.

II.

The Court erred in its Findings of Fact in including in the assets of the appellant the face value of the bonds issued by the municipalities of Indian Territory.

32 III.

The Court erred in its Findings of Fact in including in the assets of the appellant the face value of the bonds issued by the municipalities of Oklahoma Territory.

IV.

The Court erred in its Findings of Fact in not finding as the total amount of all the personal property assets of the appellant, on the first day of May, A. D. 1908, the sum of Eleven Million, Eighty-Nine Thousand, Sixty-Six and 02/100 Dollars ($11,089,066.02).

V.

The Court erred in its Findings of Fact in including in the assets of the appellant as within subdivisions 1, 2, 3, 4, 5, and 6, of Section 839, of the Revised Laws of 1905, the mortgages upon real estate in the State of Minnesota upon which the tax had been paid pursuant to said Chapter 328, Laws of 1907, and the bonds of the municipalities of Indian Territory and Oklahoma Territory.

VI.

The Court erred in holding that the inclusion of the said real estate mortgages did not violate appellant's rights under the provisions of Article 9 of the Constitution of the State of Minnesota.

VII.

The Court erred in holding that the inclusion of said real estate mortgages, upon which the tax had been paid as required by
33 Chapter 328 of the Laws of 1907, was not a violation of Section 1, Article 14 of the Amendments to the Constitution of the United States.

VIII.

The Court erred in holding that the bonds of the municipalities of Indian Territory and Oklahoma Territory held, as stated in said findings, by the appellant were not exempt from taxation by the State of Minnesota.

IX.

The Court erred in holding that the State of Minnesota could tax said bonds of the municipalities of Indian Territory and Oklahoma Territory—the same being instrumentalities of the Government of the United States.

X.

The Court erred in holding that the assessment in this case against said appellant was due process of law and not in violation of Section 1, Article 14, of the Amendments to the Constitution of the United States.

XI.

The Court erred in its Findings of Fact and Conclusions of Law, with reference to the assessment in this case as against appellant, in including, for taxable purposes, the said bonds of the municipalities of Indian Territory and the Territory of Oklahoma, and thus
34 denied to appellant the equal protection of the laws,—all in violation of section 1, Article 14, of the Amendments to the Constitution of the United States.

XII.

The Court erred in holding that the Appellant has, or had, any taxable franchise.

XIII.

The Court erred in holding that any franchise of this Appellant is taxable in any form under the Constitution and laws of the State of Minnesota.

XIV.

The Court erred in holding that there was any method or proceeding provided by the Statutes of the State of Minnesota for the assessment or taxation of any franchise belonging to this Appellant.

XV.

The Court erred in holding that the tax provided for against persons and corporations without capital stock in section 839 of the Revised Laws of 1905, is an assessment upon the property of the Appellant.

XVI.

The Court erred in not holding that the assessment in this case against the Appellant, pursuant to the provisions of said section 839 of the Revised Laws of 1905, is an assessment upon the property of the Appellant.

35 XVII.

The Court erred in holding that the arbitrary assessment made against this Appellant to the extent of Two Thousand Five Hundred Dollars ($2,500), for office furniture, was valid or lawful.

XVIII.

The Court erred in holding that the raise in the assessment of said office furniture by the State Board of Equalization to the extent of fifty per cent or to any extent, was valid or lawful.

XIX.

The Court erred in holding that any assessment upon the furniture, fixtures, furnishings, etc., of the Appellant could be made in any other way than as provided by Section 839 of the Revised Laws of 1905, to-wit, by including the same under subdivision 6 of said section as a part of the total assets of the Appellant, as was done by this Appellant in its return to the assessor.

CLAUDE B. LEONARD,
WILLIAM A. LANCASTER,
Attorneys for Appellant.

36 16767. State of Minnesota Supreme Court. State of Minnesota, Respondent, vs. The Farmers and Mechanics Savings Bank of Minneapolis, Appellant. Opinion and Syllabus. Filed March 10, 1911. I. A. Caswell, Clerk. October Term, A. D. 1910. Lewis, J.

37 16767.

STATE OF MINNESOTA:

Supreme Court, October Term, A. D. 1910.

No. 34.

STATE OF MINNESOTA, Respondent,
v.
THE FARMERS & MECHANICS SAVINGS BANK OF MINNEAPOLIS, Appellant.

Syllabus.

1. Sec. 839 R. L. 1905 provides for the taxation of savings banks by deducting the sum total of the deposits and accounts payable from the sum total of the assets including personal property appertaining to the business, and the surplus if any, is listed and assessed as credits according to the provisions of Sec. 835 R. L. 1905; Held: The tax upon the surplus is a property tax and not a tax upon the franchise to exist as a corporation.

2. Municipal bonds issued by the municipalities of the territories of the United States are not exempt from taxation in the hands of savings banks in this state and all such bonds must be listed and taken into account as a part of the assets for the purpose of determining whether there is a surplus.

3. Chapter 328 Laws 1907, which require savings banks to pay registry mortgage tax upon mortgages owned by them, without exempting such mortgages from taxation otherwise, is not class legislation nor in conflict with Sec. 1 Art. 14 of the Federal Constitution, and Sec. 1, Art. 9 of the State Constitution.

Affirmed.

38 16767.

STATE OF MINNESOTA:

Supreme Court, October Term, A. D. 1910.

No. 34.

STATE OF MINNESOTA, Respondent,
v.
THE FARMERS & MECHANICS SAVINGS BANK OF MINNEAPOLIS, Appellant.

Opinion.

In compliance with sections 835 and 839 R. L. 1905, appellant returned to the city assessor of Minneapolis for taxation for the year 1908, a statement of its assets and liabilities which showed that the liabilities exceeded the assets by $596,984.25. The following assets were omitted from the list. Bonds issued by municipalities in the

territory of Oklahoma $423,100. Bonds issued by municipalities in Indian Territory $278,000. Mortgages on real estate in the State of Minnesota upon which the registry tax had been paid amounting to $161,650, making a total of $862,750. It was admitted at the trial below that had these bonds and mortgages been listed the statement would have shown a surplus of $285,765.75, and this amount was adopted by the trial court as the basis of the assessment.

The propositions involved suggest the following order: 1. If the tax provided for savings banks by section 839 R. L. 1905, is a franchise and not a property tax, then it will be unnecessary to consider whether the bonds and mortgages were properly included to make up the credits.

2. If the statute provides for a tax upon the property of savings banks, it then becomes necessary to determine whether bonds issued by municipalities in a territory of the United States are exempt from taxation under the Federal Constitution.

3. If the tax imposed by Sec. 839 is a property tax, is the provision constitutional which excepts savings banks from the exemption from payment of all other taxes than the registery tax as provided by Chapter 328 Laws 1907.

1. Does Sec. 839 provide a franchise tax for savings banks? The constitution in force at the time Revised Laws 1905 went into effect makes no special mention of franchises as a subject of taxation. But conceding that within the meaning of Art. 9 Sec. 1, franchises may be considered property, Sec. 3 requires that all money, credits, and investments in bonds and stocks, shall be taxed. And section 4 makes special reference to banks, and requires that notes and bills moneys loaned, and all other property, effects or dues of every description shall be taxed, so that all property employed in banking shall always be subject to a taxation equal to that imposed on the property of individuals. The first section of Chapter 11, R. L. 1905 declares that all real and personal property shall be taxed, including the property of banks, but does not mention franchises. Sec. 797 which describes personal property in detail for the purposes of taxation and Sec. 835, which defines the duties of assessors, do not specify franchises. That term appears only once in Chap 11, and that is in Sec. 821 which reads: "The capital stock and franchises of corporations and persons, except as otherwise provided, shall be listed and taxed in the county, town, or district where the principal office or place of business of such corporation or person is located in this state, if there be no such office or place of business, then at the place in this state where such corporation or person transacts business."

By Sec. 835 the assessor is required to list for taxation the credits of banks having no capital stock separately from those having capital stock. Appellant is a savings bank having no capital stock, and under Sec. 839 the credits are found by deducting the amount of the deposits and liabilities from the amount of the assets. The surplus, if any, is taxed. It is not to be supposed that the legislature provided this method of determining the credits without intending to tax them as such. The state contends that this is the method provided for ascertaining the value of the franchise, and that there is no pro-

vision for a property tax. It will not be presumed that the legislature intended to ignore the constitutional mandate which requires all of the property of banks to be taxed. If the method provided by Sec. 839 is a franchise tax, it is not a property tax. Both may be imposed, but this is the only statute on the subject, and it does not provide for both. Besides, there is a great uncertainty as to the meaning of the term franchise as used in Sec. 821. The corporate right to exist is often called a franchise. In common usage that term also refers to any special privilege or right conferred by legislative power on corporations or persons. Our statute does
41 not define the term. Sec. 821 provides where capital stock and franchises (if taxed) shall be listed, but does not provide a method of ascertaining their value, nor declare how they shall be taxed. Savings banks do not enjoy any special rights or privileges, independent of the corporate right to exist, and the intention to tax such corporate franchise does not appear. Sec. 839 has reference to a property tax only and the surplus of savings banks as there determined is property.

2. Were the bonds of municipalities of Oklahoma and Indian Territories exempt? In the leading case McColloch v. State of Maryland 4 Wheat. 314, it was held that the note of the Bank of the United States, were exempt from taxation by the states; not because of any express prohibition in the constitution, but because it was necessarily implied. In the words of Chief Justice Marshall, "On a principle which so entirely pervades the constitution, is so intermixed with the materials which compose it, so interwoven with its web, so blended with its texture, as to be incapable of being separated from it without rending it into shreds." In a late case, Hibernia Savings Society v. San Francisco, 200 U. S. 310, the supreme court had occasion to review most of the decisions on the subject, and the principle, that the States cannot tax official agencies of the Federal Government, was held not to apply to checks and warrants issued by the U. S. Treasurer for payment of interest on United States bonds. In Wheaton v. City, 2 Pet. 449, that court adhered to the decision in McColloch v. Maryland, but the general principles discussed
42 in Wheaton v. City had reference to interferences by state taxation with the power of the government to "borrow money on the credit of the United States." The City of Charleston had passed an ordinance subjecting to taxation stock issued and sold by the United States as a means of raising money. A tax on the stock was held to be a tax on the contract and consequently a tax on the power to borrow money on the credit of the United States. Although the Chief Justice wrote broadly, "If the right to impose the tax exists, it is a right which in its nature acknowledges no limits. It may be carried to any extent within the jurisdiction of the state or corporation which imposes it which the will of each state and corporation may prescribe." He was speaking of the power of the government to borrow money.

In fact the limitations of the doctrine were suggested in McColloch v. Maryland. It was there declared that it did not extend to a tax on the real property of the United States Bank in common with

the other real property within the state, "nor to a tax imposed on the interest which the citizens of Maryland may hold in this institution in common with other property of the same description throughout the state." Emphasis was put upon the fact that the stamp tax on the bank notes was a tax on the operation of an instrument employed by the government to carry its power into execution.

The broad doctrine discussed in McColloch v. Maryland, was limited in Nat'l Bank v. Commonwealth, 9 Wall. 353, where the court decided that the principle did not prevent the states from taxing the shares of National banks held by the stockholders,
43 as distinguished from the capital of the bank invested in Federal securities. With reference to the limitations of the rule:—Justice Miller wrote as follows, "But the doctrine has its foundation in the proposition that the rights of taxation may be so used in such case as to destroy the instrumentalities by which the government proposes to effect its lawful purposes in the States. * * * The principle we are discussing has its limitation, a limitation growing out of the necessity on which the principle itself was founded. That limitation is that the agencies of the federal government are only exempted from state legislation, so far as that legislation may be interfered with, or impair their efficiency in performing the functions by which they are designed to serve that government." The limitations of the doctrine were pointed out and applied in Ry. v. Peniston, 18 Wal. 5, where the Union Pacific Railroad Co. claimed that its property was exempt from taxation. It was decided that no constitutional implications prohibited a state tax upon the property of an agent of the government merely because it is the property of such agent. "It is therefore manifest that the exemption of Federal agencies from State taxation is dependent, not upon the nature of the agents or upon the mode of their constitution, or upon the fact that they are agents, but upon the effect of the tax, that is upon the question whether the tax does in truth deprive them of power to serve the government as they were intended to serve it, or does it hinder the efficient exercise of their power. A tax upon their property has no such necessary effect. It leaves them free to discharge the duties they have undertaken to perform. A tax upon their operation is a direct obstruction to the exercise of Fed-
44 eral powers." Of course Territories are political sub-divisions of the United States and are not independent sovereignties. Perhaps as comprehensive a statement of their relation to the general government as any is found in Nat'l Bank v. Yankton, 101 U. S. 129, where it was said, "The territories are but political subdivisions of the outlying dominion of the United States. Their relation to the general government is much the same as that which counties bear to the respective states, and Congress may legislate for them as a state does for its municipal organizations. The organic law of a Territory takes the place of a constitution as the fundamental law of the local government. It is obligatory on and binds the Territorial authorities; but Congress is supreme, and for purposes of this department of its governmental authority, has all the powers of the people of the United States except such as have been

expressly or by implication reserved in the prohibitions of the constitution." The court further stated that the power of Congress to amend the acts of a territorial legislature was a power incident to sovereignty and continued until granted away. "Congress may not only abrogate laws of the territorial legislatures, but it may itself legislate directly for the local government. It may make a void act of the territorial legislature valid, and a valid act void. In other words it has full and complete legislative authority over the people of the territories and all the departments of the territorial governments. It may do for the Territories what the people, under the Constitution of the United States may do for the States." See also Snow v. U. S. 18 Wall. 317; Mormon Church v. U. S. 136
45 U. S. 1; Murphy v. Ramsey, 114 U. S. 15; A. T. & S. Fe Ry. v. Sowers, 213 U. S. 55, Grether v. Wright, 75 Fed. 742.

We must proceed then with the understanding that Oklahoma and Indian Territories were instrumentalities or agencies provided by Congress for the government of the people within their borders, that the municipalities were the agents of the Territories and of the general government to more effectively accomplish the purposes of government in local affairs. But does it follow that all the property of territories or of their municipalities are exempt from taxation under the doctrine of McColloch v. Maryland? If the true test for determining the right of taxation by the states is not the fact of agency, but whether it will operate to impair or interfere with such agencies in performing the functions by which they are designed to serve the United States, then we must inquire whether the municipalities in question will be interfered with in the performance of those functions by taxing their bonds in the hands of purchasers in this state. The people of those municipalities found it convenient to issue bonds in order that they might carry on immediate local improvements. In a broad sense they were agencies of the Territories and were conducting those enterprises for the United States government. Those people were exercising the right of local self government under the authority of the United States but the United States was not responsible for all their acts and it could not be claimed that their obligations were guaranteed by the United States. And if the bonds they issued were sold on the strength of the municipal credit alone, how is the power of the gov-
46 ernment to borrow money on the credit of the United States affected by their taxation, by the States? If this tax cannot be imposed, then these bonds command a higher price on the market and the municipalities of the States are placed at a disadvantage in disposing of their bonds. If the tax may be imposed, then such municipal bonds take their proper market value on their merits in the money markets of the world. To hold such bonds exempt from taxation by the States would push the doctrine of interference with the agencies of the Government to the extreme limit, a limit certainly not expressed in the Federal Constitution, and not implied if we correctly interpret the decisions of the Federal Supreme Court.

3. Chapter 328 L. 1907, imposes a tax of fifty cents on each hundred dollars or a major fraction thereof, of the principal debt which

is secured by any mortgage of real property in this state, and registered after April 30, 1907. Sec. 3 reads: "All mortgages upon which such tax has been paid, with the debts or obligations secured thereby and the papers evidencing the same, shall be exempt from all other taxation; but nothing herein shall exempt such property from the operation of the laws relating to the taxation of gifts and inheritances, or those governing the taxation of banks, savings banks or trust companies; provided that this act shall not apply to mortgages taken in good faith by persons or corporations whose personal property is expressly exempted from taxation by law, or is taxed on the basis of gross earnings, or other method of commutation in lieu of all other taxes."

According to the terms of the proviso, the act does not
47 apply to the persons and corporations therein mentioned. The act applies to banks, savings banks and trust companies, although the mortgages they hold are not exempt from ordinary taxation. The question then is, did the legislature adopt an arbitrary basis of classification such as to come within the prohibition in our constitution, or to infringe upon that provision of the Federal Constitution which prohibits the passage of laws by a state which deny to any person within its jurisdiction the equal protection of the laws. The exception from the exemption includes banks and trust companies, but we are concerned at this time with the status of savings banks only, and we need not consider whether the classification is proper for those institutions.

Sec. 839, R. L. 1905 treats of savings banks, for the purposes of taxation, in a special manner. They have no capital stock, yet their property is not taxed in the same way as the property of individuals or of other corporations. By Sec. 838 the value of the stock of corporations having capital stock is ascertained by deducting the value of the real and personal property from the market or actual value of the stock, and the amount of the difference is taxed as stocks and bonds, and the real estate and personal property are taxed in the ordinary way. Sec. 839 places all banks without capital stock (except savings banks) brokers and stock jobbers in one class, and savings banks in another class. The former are taxed by ascertaining the difference between the amount of money on hand or in transit,
the amount of money in the hands of others subject to draft,
48 the amount of checks or cash items etc., the amount of bills receivable and other credits, and from the total of these amounts the deposits and accounts payable are deducted. The balance, if any, is assessed as money under Sec. 835. The bonds and stocks and personal and real property are assessed separately in the ordinary way. But in the case of savings banks, no specific property is taxed separately except real property. Its money, checks, bills receivable, bonds and stocks, and all personal property appertaining to the business are listed for the purpose of ascertaining whether there is a surplus, and the surplus is found by deducting the total of the deposits and accounts payable from the total value of the assets.

It therefore appears that savings banks enjoy privileges accorded

to no other person or corporation subject to taxation. Other corporations are entitled to deduct their liabilities from their credit only, (Sec. 836). Savings banks alone are entitled to deduct their liabilities from the sum total of all their assets except real property. Chapter 328 Laws of 1907 was evidently drawn with reference to this advantage, and if these institutions had acquired a valuable advantage in business by reason of this privilege, that fact was a sufficient reason for attempting a more equitable distribution of the burdens of taxation by excepting them from the exemption in the mortgage tax law.

There is a reason for the classification and there is present that substantial distinction demanded by the law between the objects placed in the class and those excluded.

49 We have read the very able brief of appellant on the "Equal Protection of the Laws" as guaranteed by the Federal Constitution. Many of the propositions advanced must be accepted as settled by the decisions of the Federal Supreme Court. In Hays v. Mo., 120 U. S. 68 that court stated that all persons subject to legislation, limited as to the objects to which it is directed, shall be treated alike under like circumstances, and considerations, both in the privileges conferred and the limitations imposed. This declaration of the law corresponds to the rule of this court in determining a proper classification. That court has also announced that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that it must appear not only that a classification has been made but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection. Gulf C. & S. F. Ry. Co. v. Ellis, 165 U. S. 150. In Cotting v. Kansas City Stock Yards 183 U. S. 79, an act of the legislature of Kansas was held invalid because it established a classification between stock yards doing a large business and those doing a small business. It was stated in the course of the opinion, "Equal protection of the laws means equal exemption with others of the same class from all charges and burdens of every kind." But the inequality must be substantial and effect a substantial right and result in unequal burdens. Merchants Bank v. Penn. 167 U. S. 461.

50 Our attention is called to the distinction between imposing conditions upon the right to incorporation, and the imposing of obligations upon such existing corporations. This phase of the question is discussed in Western Union Tel. Co. v. Kansas, 216 U. S. 1. Appellant contends that the opportunity and good will of savings banks permissible under the tax laws, if any exist, are vested in them by virtue of their right of existence as corporations. Chapter 58 R. L. 1905 with respect to savings banks throws many safeguards around them. The purpose seems to have been to provide a safe method for persons of small means to accumulate their savings. But because it may have been found profitable to invest the deposits in mortgages on real estate in this state, is not a sufficient reason why savings banks should not pay the registry mort-

gage tax and at the same time submit to the inclusion of such mortgages among the assets for the purpose of ascertaining the surplus. This exception could only amount to a discrimination or double taxation if these institutions stood upon the same footing as other banks and corporations.

Experience may show that it may be advisable to adopt some other method or classification in the future. The legislature is not bound by any fast rule and may change the method of taxation whenever in its judgment the necessity arises, subject only to the limitation of the constitution as construed by the courts. It is our opinion that Chapter 328 Laws 1907 is not in conflict with the Federal or the State Constitution.

Affirmed.

51 16767. State of Minnesota. Supreme Court. State of Minnesota, Respondent, vs. The Farmers and Mechanics Savings Bank of Minneapolis, Appellant. Opinion. Filed April 13, 1911. I. A. Caswell, Clerk. October Term, A. D. 1910. Per Curiam.

52 STATE OF MINNESOTA:

Supreme Court, October Term, A. D. 1910.

16767. No. 34.

STATE OF MINNESOTA, Respondent,
vs.
FARMERS & MECHANICS SAVINGS BANK, Appellant.

Per Curiam.

In the petition for reargument attention is called to the fact that appellant's personal property, consisting of office furniture, was separately assessed at $3750. This error was covered by proper assignments but no mention was made of it in the briefs, and if the point was raised in the oral argument it was not recalled at the time the opinion was prepared. However respondent consents that the question be disposed of on the merits.

Since this property had already been taken into consideration in determining the surplus it could not be separately taxed. Such a course would result in double taxation which is forbidden by the Constitution and is not authorized by the statute. The decision is therefore modified and the cause remanded with directions to deduct the sum of $3750. from the amount of the assessment.

Although special reference may not have been made in the opinion to § 1 art. 9 of the Constitution, the argument and decision were intended to include a consideration of the requirement that taxes must be uniform upon the same class of subjects.

Petition for reargument denied.

53 16767. State of Minnesota. Supreme Court. Copy of minutes of argument. Filed May 12, A. D. 1911. I. A. Caswell, Clerk.

54 STATE OF MINNESOTA:

Supreme Court, General October Term, A. D. 1910.

THURSDAY MORNING, 9.30 O'CLOCK, *January* 19, *A. D.* 1901.

Court convened pursuant to adjournment. All the Justices being present except Justice Jaggard.

Reg. No. 16767. Cal. No. 34.

STATE OF MINNESOTA, Respondent,

vs.

FARMERS AND MECHANICS SAVINGS BANK OF MINNEAPOLIS, Appellant.

This cause came on to be heard this day upon the return to the appeal herein.

Thereupon the same was argued by counsel, submitted to the court for decision and taken under advisement.

A true record.

Attest:

I. A. CASWELL, *Clerk.*

The foregoing is a full and true copy of the Minutes of Argument in the above entitled cause.

Attest:

[Seal of the Supreme Court, State of Minnesota.]

I. A. CASWELL, *Clerk,*
By —— ——, *Deputy.*

55 No. 16767. State of Minnesota. Supreme Court. Copy of order for judgment. Filed May 12, 1911. I. A. Caswell, Clerk.

56 STATE OF MINNESOTA:

Supreme Court, October Term, A. D. 1910.

No. 34.

STATE OF MINNESOTA, Respondent,

vs.

FARMERS & MECHANICS SAVINGS BANK OF MINNEAPOLIS, Appellant.

Appeal from District Court, Fourth Judicial District, County of Hennepin.

This cause having been duly argued and submitted at the General October Term of this court A. D. 1910 upon the return to the appeal herein.

Now, after full and mature deliberation had thereon, it is here and hereby ordered that the order of the Court below, herein appealed from, be and the same hereby is, in all things modified and that final judgment be entered in this Court in favor of the Plaintiff and Respondent and against the Defendant and Appellant for the sum of Four Thousand Five Hundred Two and 44/100 Dollars ($4502.44), with interest thereon at the rate of 6% per annum from the 6th day of April, 1910, together with the costs in the District Court of Hennepin County, amounting to Ten Dollars ($10.00), and the costs of the Clerk of this Court to be taxed, and that judgment be entered accordingly.

Entered May 12, A. D. 1911.

By the Court,

Attest:

I. A. CASWELL, *Clerk.*

I hereby certify that the foregoing is a full and true copy of the original Order for judgment entered in the above entitled cause.

Attest:

[Seal of the Supreme Court, State of Minnesota.]

I. A. CASWELL, *Clerk.*

57 State of Minnesota. Supreme Court. Transcript of judgment. Filed May 12, 1911. I. A. Caswell, Clerk.

58 State of Minnesota, Supreme Court, October Term, A. D. 1910.

No. 34.

STATE OF MINNESOTA, Respondent,

vs.

THE FARMERS & MECHANICS SAVINGS BANK OF MINNEAPOLIS, Appellant.

Pursuant to an order of Court duly made and entered in this cause, on the 11th day of May, A. D. 1911.

It is here and hereby determined and adjudged that the order of the Court below, herein appealed from, to wit, of the District Court of the Fourth Judicial District, sitting within and for the County of Hennepin be and the same hereby is in all things modified and that final judgment be entered in this Court in favor of the Plaintiff and Respondent and against the Defendant and Appellant for the sum of Four Thousand Five Hundred and Two and 44/100 Dollars ($4502.44). Now, therefore, Pursuant to said order it is determined and adjudged that State of Minnesota, Plaintiff and Respondent herein, have and recover of The Farmers & Mechanics Savings Bank of Minneapolis, Defendant and Appellant herein, the sum of Four Thousand Five Hundred and Two and 44/100 Dollars ($4502.44) and Two Hundred Ninety-seven and 16/100 Dollars ($297.16) interest thereon from April 6, 1910, together with

Ten Dollars ($10.00) costs in the District Court of Hennepin County. And it is further determined and adjudged that the State of Minnesota, Respondent above named, do have and recover from said The Farmers & Mechanics Savings Bank of Minneapolis, Appellant herein, the further sum and amount of Fourteen and 00/100 Dollars ($14.00) costs and disbursements in this cause in this Court, all said sums amounting in the aggregate to the
59 sum of Four Thousand Eight Hundred Twenty-three and 60/100 Dollars ($4823.60), and that execution may be issued for the enforcement thereof.

Dated and signed this 12th day of May, A. D. 1911.

BY THE COURT.

Attest:

I. A. CASWELL, *Clerk.*

Statement for Judgment.

Amount to be entered by order of the Court herein.....	$4502.44
Interest thereon from April 6, 1910.....	297.16
Costs District Court Hennepin County.....	10.00
Clerk's fees Supreme Court.....	14.00
Total.....	$4823.60

STATE OF MINNESOTA,
Supreme Court, ss:

I, I. A. Caswell, Clerk of said Supreme Court do hereby certify that the foregoing is a full and true copy of the Entry of Judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.

Witness my hand and the seal of said Supreme Court at the Capitol in the City of St. Paul, this 12th day of May, A. D. 1911.

[Seal of the Supreme Court, State of Minnesota.]

I. A. CASWELL, *Clerk.*

60 STATE OF MINNESOTA,
Supreme Court:

No. 16767.

STATE OF MINNESOTA, Respondent,
against
THE FARMERS & MECHANICS SAVINGS BANK OF MINNEAPOLIS,
Appellant.

Judgment Roll.

Filed May 12, 1911.

I. A. CASWELL, *Clerk.*

61 SUPREME COURT,
State of Minnesota, ss:

I, I. A. Caswell, clerk of said Court, do hereby certify that the foregoing is a true, full and complete transcript of the records and proceedings in the case of State of Minnesota, Respondent, vs. The Farmers and Mechanics Savings Bank of Minneapolis, Appellant, and also of the opinion of the Court rendered therein, as the same now appears on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in St. Paul, Minnesota, this 22nd day of May, 1911.

[Seal of the Supreme Court, State of Minnesota.]

I. A. CASWELL,
Clerk of Supreme Court of Minnesota.

62 UNITED STATES OF AMERICA,
Supreme Court of the United States:

THE FARMERS AND MECHANICS SAVINGS BANK OF MINNEAPOLIS,
Plaintiff in Error,
vs.
STATE OF MINNESOTA, Defendant in Error.

Assignment of Errors and Prayer for Reversal.

Filed May 12, 1911.

I. A. CASWELL, *Clerk.*

63 UNITED STATES OF AMERICA,
Supreme Court of the United States:

THE FARMERS AND MECHANICS SAVINGS BANK OF MINNEAPOLIS,
Plaintiff in Error,
vs.
THE STATE OF MINNESOTA, Defendant in Error.

Assignment of Errors and Prayer for Reversal.

Comes now the Plaintiff in Error in the above entitled suit, and avers that, in the record and proceedings in said suit, and in the final judgment entered therein, the Supreme Court of the State of Minnesota erred, to the grievous injury and prejudice, and against the rights of Plaintiff in Error, in the following particulars, to-wit;

1. The said Supreme Court of the State of Minnesota erred in holding that the bonds issued by the municipalities of Indian Territory and of Oklahoma Territory, were properly taxable by the State of Minnesota.

2. The said Supreme Court of the State of Minnnesota erred in not holding that it was incompetent for the State of Minnesota to tax the bonds issued by the municipalities of Indian Territory and

f Oklahoma Territory, and that such taxation by the State of
linnesota was in violation of the Constitution of the United States.

3. The said Supreme Court of the State of Minnesota erred in holding that the attempted exception of saving banks (one
4 of which this Plaintiff in Error is) from exemption from all other forms of taxation on real estate mortgages in the State
f Minnesota (an exemption allowed to other owners of mortgages),
ontained in Section 3, of Chapter 328, of the Laws of Minnesota,
or the year 1907, is not in violation of the "equal protection"
lause of Section 1, of Article Fourteenth of the Amendments to
he Constitution of the United States.

4. The said Supreme Court of the State of Minnesota erred in
ot holding that the imposition upon savings banks of the mortgage
ax, provided for by said Chapter 328, of the Laws of Minnesota for
he year 1907, as well as upon other owners of real estate mortgages,
n the State of Minnesota, and the exception of savings banks from
he exemption from all other forms of taxation of such real estate
mortgages in the State of Minnesota, is double taxation, and dis-
criminatory against savings banks and this Plaintiff in Error, and
s denying to savings banks and to this Plaintiff in Error the equal
protection of the laws guaranteed by said Section 1, of Article
Fourteenth of the Amendments to the Constitution of the United
States.

Wherefore, for these and other manifest errors appearing in the record, and in the said final judgment, the said Plaintiff in Error prays that the judgment of the said Supreme Court of the State of Minnesota of record herein, be reversed and set aside, and that judgment be rendered for Plaintiff in Error, granting justice, under the Constitution of the United States, and also costs to Plaintiff in Error.

CLAUDE B. LEONARD,
65 WM. A. LANCASTER,
Attorneys for Plaintiff in Error.

[Endorsed:] 16767. United States of America, Supreme Court of the United States. The Farmers & Mechanics Savings Bank of Minneapolis, Plaintiff in Error, vs. The State of Minnesota, Defendant in Error. Assignment of Errors and Prayer for Reversal. Filed May 12, 1911. I. A. Caswell, Clerk.

66 State of Minnesota, in Supreme Court, October Term, A. D. 1910. No. 34. State of Minnesota, Respondent, vs. The Farmers and Mechanics Savings Bank of Minneapolis, Appellant. Petition for Writ of Error. Filed May 12, 1911. I. A. Caswell, Clerk.

67 State of Minnesota, in Supreme Court, October Term, A. D. 1910.

No. 34.

STATE OF MINNESOTA, Respondent,
vs.
THE FARMERS & MECHANICS SAVINGS BANK OF MINNEAPOLIS, Appellant.

Petition for Writ of Error.

Comes now the above named Appellant, and says:

1. That, on the 12th day of May, A. D. 1911, final judgment in the above entitled suit was entered in this Court against Appellant.

2. That Appellant was, and is, aggrieved in that, in said final judgment and the proceedings had prior thereto in said suit, certain errors were committed to Appellant's prejudice.

3. That in said suit there was drawn in question the validity of certain Statutes of the State of Minnesota, on the ground of their being repugnant to the Constitution of the United States, and the decision and judgment of this Court in said suit was in favor of the validity of said Statutes, and as Appellant believes, against Appellant's rights under the Constitution of the United States, all of which will more fully appear from the assignment of errors filed herein.

Appellant therefore prays that a writ of error may issue to the Supreme Court of the State of Minnesota for the correcting
68 of the errors complained of, and that a duly authenticated transcript of the record, proceedings and papers herein may be sent to the Supreme Court of the United States, and that such other and further proceedings be had herein as may be just and proper.

CLAUDE B. LEONARD,
WM. A. LANCASTER,
Attorneys for Appellant.

69 [Endorsed:] 16767. State of Minnesota, in Supreme Court, October Term, A. D. 1910. No. 34. State of Minnesota, Respondent, vs. The Farmers & Mechanics Savings Bank of Minneapolis, Appellant. Petition for Writ of Error. Filed May 12, 1911. I. A. Caswell, Clerk.

70 State of Minnesota, in Supreme Court, October Term, A. D. 1910. No. 34. State of Minnesota, Respondent, vs. The Farmers and Mechanics Savings Bank of Minneapolis, Appellant. Allowance of Writ of Error. Filed May 12, 1911. I. A. Caswell, Clerk.

71 STATE OF MINNESOTA:

In Supreme Court, October Term, A. D. 1910.

No. 34.

STATE OF MINNESOTA, Respondent,
vs.
THE FARMERS & MECHANICS SAVINGS BANK OF MINNEAPOLIS, Appellant.

Allowance of Writ of Error.

The above named Appellant, having filed herein and presented to this Court his petition praying for the allowance of a writ of error, intended to be urged by Appellant, and praying further that a duly authenticated transcript of the records, proceedings and papers herein may be sent to the Supreme Court of the United States; and that such other and further proceedings herein be had as may be just and proper; and, upon consideration of said petition, and Appellant's assignment of errors filed herein, this Court, desiring to give petitioner an opportunity to test in the Supreme Court of the United States the questions therein presented,

It is ordered by this Court, that a writ of error be allowed as prayed for, provided, however, that said Farmers & Mechanics Savings Bank of Minneapolis, Appellant, give bond, according to law, in the sum of $6000.00, which said bond and writ of error shall operate as a supersedeas of the judgment of this Court in said cause, and of any and all further proceedings thereon.

In testimony whereof, witness my hand this 12th day of May, A. D. 1911.

CHAS. M. START,
Chief Justice of the Supreme Court of the State of Minnesota.

72 [Endorsed:] 16767. State of Minnesota, in Supreme Court, October Term, A. D. 1910. No. 34. State of Minnesota, Respondent, vs. The Farmers & Mechanics Savings Bank of Minneapolis, Appellant. Allowance of Writ of Error. Filed May 12, 1911. I. A. Caswell, Clerk.

73 State of Minnesota, in Supreme Court. No. 34. State of Minnesota, Respondent, vs. The Farmers and Mechanics Savings Bank of Minneapolis, Appellant. Bond. Filed May 12, 1911. I. A. Caswell, Clerk.

74 STATE OF MINNESOTA:

In Supreme Court, October Term, A. D. 1910.

No. 34.

STATE OF MINNESOTA, Respondent,
vs.
THE FARMERS AND MECHANICS SAVINGS BANK OF MINNEAPOLIS, Appellant.

Bond.

Know all men by these presents: That we, The Farmers and Mechanics Savings Bank of Minneapolis, a corporation, of the County of Hennepin, and State of Minnesota, as principal, and John De Laittre and Newton F. Hawley, of said County and State, as sureties, are held and firmly bound unto the above named State of Minnesota, in the sum of Six Thousand Dollars ($6,000), to be paid to it, and for the payment of which, well and truly to be made, we bind ourselves, and each of us, and our, and each of our, heirs, executors, administrators and successors, jointly and severally, firmly by these presnets.

Sealed with our seals and dated the 12th day of May, A. D. 1911.

Whereas the above named Appellant seeks to prosecute a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled suit by the Supreme Court of the State of Minnesota,

Now, therefore, the condition of this obligation is such that if the above named Appellant shall prosecute said writ of error
75 to effect, and answer all costs and damages that may be adjudged against Appellant, and pay said judgment if Appellant shall fail to make good Appellant's said plea, then this obligation to be void, otherwise to remain in full force and effect.

THE FARMERS AND MECHANICS SAVINGS BANK OF MINNEAPOLIS,

[CORPORATE SEAL.]

By JNO. DE LAITTRE, *Its President.*
N. F. HAWLEY, *Its Treasurer.*
JNO. DE LAITTRE. [SEAL.]
N. F. HAWLEY. [SEAL.]

Witnesses:
H. E. COBB,
M. L. COLBURN.

STATE OF MINNESOTA,
County of Hennepin, ss:

On this 12th day of May, A. D. 1911, before me, the und-rsigned, a Notary Public, within and for said County and State, appeared

John De Laittre and N. F. Hawley, to me personally known; who being by me duly sworn, did severally say, that they are the President and Treasurer, respectively, of The Farmers and Mechanics Savings Bank of Minneapolis; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Trustees; and the said John De Laittre and N. F. Hawley acknowledge- said instrument to be the free act and deed of said corporation.

[NOTARIAL SEAL.] H. E. COBB,
Notary Public, Hennepin County, Minnesota.

My commission expires M'ch 20th, 1913.

76 STATE OF MINNESOTA,
County of Hennepin, ss:

On this 12th day of May, A. D. 1911, before me a Notary Public within and for said County, personally appeared John De Laittre and Newton F. Hawley, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

[NOTARIAL SEAL.] H. E. COBB,
Notary Public, Hennepin County, Minnesota.

My commission expires M'ch 20th, 1913.

STATE OF MINNESOTA,
County of Hennepin, ss:

John De Laittre and Newton F. Hawley, whose names are subscribed to the above bond as sureties, on oath say, each for himself, that they are residents of Hennepin County, Minnesota, and freeholders of the State of Minnesota, and are each worth more than double the sum in said bond specified as a penalyu thereof. over and above all their just debts and liabilities, respectively, in property by law exempt from execution in this State.

JNO. DE LAITTRE.
N. F. HAWLEY.

Subscribed and sworn to before me this 12th day of May, A. D. 1911.

[NOTARIAL SEAL.] H. E. COBB,
Notary Public, Hennepin County, Minnesota.

My commission expires M'ch 20th, 1913.

This bond approved this 12 day of May, A. D. 1911.

CHAS. M. START,
Chief Justice of the Supreme Court of the State of Minnesota.

77 State of Minnesota, in Supreme Court, October Term, A. D. 1910. No. 34. State of Minnesota, Respondent, vs. The Farmers and Mechanics Savings Bank of Minneapolis, Appellant. Writ of Error and Allowance thereof. Filed May 12, 1911. I. A. Caswell, Clerk.

78 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Minnesota, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court, before you, at the October Term, 1910, thereof, between the State of Minnesota, Plaintiff and Respondent, and The Farmers & Mechanics Savings Bank of Minneapolis, Defendant and Appellant, manifest error hath happened, to the great damage of the said Defendant and Appellant as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, *will* all things concerning the same to the Supreme Court of the United States, together with this writ. so that you have the said record and proceedings aforesaid at the Capitol, in the City of Washington, District of Columbia, and filed in the office of the Clerk of the Supreme Court of the United States within thirty days from the date hereof, to the end that the record and proceedings aforesaid, being inspected, the Supreme Court of the United States may cause further to be done therein to
79 correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 12th day of May, A. D. 1911.

Issued at office in St. Paul, Minnesota, with the seal of the Circuit Court of the United States for the District of Minnesota, Third Division.

[Seal U. S. Circuit Court, District of Minnesota, Third Division.]

LOUISE B. TROTT,
Clerk of the Circuit Court of the United States of America for the District of Minnesota.

Allowed by

CHAS. M. START,
Chief Justice of the Supreme Court of the State of Minnesota.

80 [Endorsed:] 16767. State of Minnesota, in Supreme Court, October Term, A. D. 1910. State of Minnesota, Respondent, vs. The Farmers & Mechanics Savings Bank of Minneapolis, Appellant. Writ of Error. Filed May 12, 1911. I. A. Caswell, Clerk.

81 SUPREME COURT,
State of Minnesota, ss:

I, I. A. Caswell, clerk of the said court, do hereby certify that there was lodged with me as such clerk on May 12, 1911, in the matter of the State of Minnesota vs. The Farmers and Mechanics Savings Bank of Minneapolis,

1. The original bond of which a copy is herein set forth.

2. Two copies of the Writ of Error, as herein set forth,—one for the defendant, and one to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in St. Paul, Minnesota, this 22nd day of May, 1911.

[Seal of the Supreme Court, State of Minnesota.]

I. A. CASWELL,
Clerk Supreme Court of Minnesota.

82 State of Minnesota, in Supreme Court, October Term, A. D. 1910. State of Minnesota, Respondent, vs. The Farmers and Mechanics Savings Bank of Minneapolis, Appellant. Citation. Filed May 15, 1911. I. A. Caswell, Clerk.

83 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the State of Minnesota, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States, at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Minnesota, wherein The Farmers & Mechanics Savings Bank of Minneapolis is Plaintiff in Error, and you are Defendant in Error, to show cause, if any there be, why the judgment rendered against the said Plaintiff in Error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Chief Justice of the Supreme Court of Minnesota this 12th day of May, A. D. 1911.

CHAS. M. START,
Chief Justice of the Supreme Court of the State of Minnesota.

[Seal of the Supreme Court, State of Minnesota.]

Attest:
I. A. CASWELL,
Clerk of the Supreme Court of the State of Minnesota.

84 MINNEAPOLIS, MINNESOTA, *May* —, 1911.

I, as Assistant County Attorney of the County of Hennepin, State of Minnesota, and as attorney of record for the Defendant in Error in the above entitled case, hereby acknowledge due service of the above citation.

ELMER W. GRAY,
As Assistant County Attorney of Hennepin County, Minnesota, and as Attorney of Record for the Defendant in Error.

Dated May 13th, 1911.

85 [Endorsed:] 16767. State of Minnesota, in Supreme Court, October Term, A. D. 1910. State of Minnesota, Respondent vs. The Farmers & Mechanics Savings Bank of Minneapolis, Appellant. Citation. Filed May 15, 1911. I. A. Caswell, Clerk.

86 UNITED STATES OF AMERICA,
Supreme Court of Minnesota, ss:

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name and affix the seal of said Supreme Court of Minnesota, in the City of St. Paul, Minnesota, this 22nd day of May, 1911.

[Seal of the Supreme Court, State of Minnesota.]

I. A. CASWELL,
Clerk of Supreme Court, Minnesota.

Endorsed on cover: File No. 22,730. Minnesota Supreme Court. Term No. 323. The Farmers & Mechanics Savings Bank of Minneapolis, plaintiff in error, vs. The State of Minnesota. Filed June 12th, 1911. File No. 22,730.

INDEX.

APPENDIX.

AUTHORITIES CITED.

Supreme Court of the United States.

OCTOBER TERM, 1912.

No. 323.

THE FARMERS AND MECHANICS SAVINGS BANK OF MINNEAPOLIS, *Plaintiff in Error,*

vs.

THE STATE OF MINNESOTA, *Defendant in Error.*

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF FACTS.

This is a Writ of Error to the Supreme Court of the state of Minnesota, to review a final judgment of that court in favor of the defendant in error and against the plaintiff in error (for judgment see transcript of record, pages 28 and 29).

The action was one to recover the amount of a personal property assessment. The particular provision of the statutes under which the assessment was made is known as section 839, Revised Laws of Minnesota, 1905. A copy of this section will be found in the appendix to this brief, marked Exhibit "A"

The plaintiff in error is a mutual savings bank, organized as a corporation under the laws of the state of Minnesota, and having its principal place of business at Minneapolis. It has no capital stock and no stockholders. It is governed by a board of trustees, who serve without pay. The only investments it can make are those authorized by the statutes of Minnesota. It cannot deal in real estate or other property. It can only make loans on real estate security, and is limited in making investments outside of real estate mortgages, to United States, state, territorial, municipal and railroad bonds. It is allowed to accumulate a surplus,—not exceeding, however, fifteen per cent of its deposits. It is *purely mutual* and its profits are divided quarterly among its depositors, in the form of dividends or interest.

On May 1, 1908, the plaintiff in error transmitted to the city assessor of the city of Minneapolis a sworn statement, as required by section 839, Revised Laws of Minnesota, 1905. That statement showed personal property as-

sets amounting to $11,089,066.02, and deposits to $11,416,050.27, accounts payable, $250,000.00,—total indebtedness of $11,666.050.27. Under the provisions of said section 839, no surplus was shown, and there was nothing upon which to levy a tax against the plaintiff in error. In making the return of personal property assets, the bank deducted certain bonds owned by it and issued by the municipalities of Indian territory, to the amount of $278,000.00, and bonds owned by it and issued by the municipalities of the Territory of Oklahoma, to the amount of $423,100.00, or a total of such bonds of $701,100.00. It also deducted real estate mortgages, within the state of Minnesota, upon which the state mortgage registration tax had been paid, amounting to $161,650.00. It thus deducted in the aggregate from its personal property assets, $862,750.00. These deductions were made because, as it claimed, the municipal bonds of Indian Territory and of the Territory of Oklahoma were not taxable by the state of Minnesota; and, as to the real estate mortgages within the state of Minnesota, it was claimed that they were already taxed under the state mortgage registration law, and were, therefore, exempt from further taxation. The assessor added to the personal property assets of the bank all of these items, aggregating $862,750.00, making the total personal property assets of the bank

$11,951,816.02. He then deducted the amount of its liabilities, $11,666,050.27, showing a nominal surplus of personal property assets, as of May 1, 1908, of $285,765.75. He thereupon made an assessment against the bank of $150,000.00, which assessment was thereafter raised by the state board of equalization to $151,250.00, upon which the tax in question was levied. Default in payment of the tax was made, and suit was instituted in the District Court of Hennepin county, Minnesota, and, upon trial, judgment ordered against the plaintiff in error for the sum of $4,197.19, together with a penalty for non-payment, of ten per cent, or $419.72. A motion for a new trial was made, and denied, and an appeal taken to the Supreme Court of the state of Minnesota, wherein the order of the lower court was in a minor manner modified, and, as modified, affirmed (transcript of record, page 26), and final judgment was thereafter entered by the Supreme Court of the state of Minnesota, as appears on pages 28 and 29 of the transcript of record.

It will be noticed from the foregoing statement of facts that if the bonds of the municipalities of Indian Territory and of the Territory of Oklahoma, were properly deducted by the bank, then there was no surplus, and consequently no ground for any assessment against the bank. Moreover, even if the bonds

of such municipalities were improperly deducted, and were properly added by the assessor to the personal property assets of the bank, the surplus would only amount to $124,115.75, unless there was added thereto the real estate mortgages within the state of Minnesota upon which the registration tax had been duly paid. If, therefore, the bonds of the municipalities of the two territories in question were, under the law, properly deducted, then *all of the assessment was unwarranted and the tax imposed void.* In the District Court of Hennepin county, counsel for the defendant in error conceded that if the tax imposed was to be treated as a tax upon property, then the bonds of the municipalities in question were properly deducted, but they contended that the tax imposed upon a savings bank under said section 839 was not a property tax at all, but a franchise tax, and this was in substance the contention of the defendant in error in the Supreme Court.

ASSIGNMENTS OF ERROR.

I.

The Supreme Court of the state of Minnesota erred in holding that the bonds issued by the municipalities of Indian Territory and of the Territory of Oklahoma, were properly taxable by the state of Minnesota.

II.

The Supreme Court of the state of Minnesota erred in not holding that it was incompetent for the state of Minnesota to tax the bonds issued by the municipalities of Indian Territory and of the Territory of Oklahoma, and in not holding that such tax by the state of Minnesota was in violation of the constitution of the United States.

III.

The Supreme Court of the state of Minnesota erred in holding that the attempted exception of savings banks (one of which this plaintiff is) from exemption from all other forms of taxation on real estate mortgages within the state of Minnesota (an exemption allowed to other owners of mortgages) contained in section three, of chapter 328 of the laws of Minnesota for the year 1907, is not in violation of the "Equal Protection" clause of section 1, of article 14, of the amendments to the constitution of the United States.

IV.

The Supreme Court of the state of Minnesota erred in not holding that the imposition upon savings bank of the mortgage tax provided by said chapter 328 of the laws of Min-

nesota for the year 1907, as well as upon other owners of real estate mortgages in the state of Minnesota, and the exception of savings banks from the exemption from all other forms of taxation of such real estate mortgages in the state of Minnesota is double taxation and discriminatory against savings banks and this plaintiff in error, and is denying to savings banks and to this plaintiff in error the equal protection of the laws guaranteed by said section 1 of article 14 of the amendments to the constitution of the United States.

BRIEF OF ARGUMENT.

I.

The plaintiff in error claimed on its appeal to the Supreme Court of the state of Minnesota as follows:

(a) That the tax imposed by said section 839 was a tax upon *property* alone and in no sense a *franchise* tax, as claimed by the defendant in error.

(b) That the municipal bonds of Indian Territory and of the Territory of Oklahoma were properly deducted from the personal property assets of the bank for the reason that the same were not taxable by the state.

(c) That so much of said section three of chapter 328 as attempted to except savings

banks from the exemption from all other taxes allowed generally to other holders of real estate mortgages was discriminatory against such savings banks and in violation of the equality clause of section one, article XIV of the amendments to the constitution of the United States.

A Property Tax.

The Supreme Court of the state of Minnesota squarely held in its decision that the tax imposed by said section 839 was a tax upon *property*, as such, pure and simple and in no sense a *franchise* tax (see paragraph one of the decision, pages 20 and 21, of the transcript of record). The concluding paragraph of the opinion with respect to this point is as follows

> *"Savings banks do not enjoy any special rights or privileges, independent of the corporate right to exist, and the intention to tax such corporate franchise does not appear. Section 839 has reference to a property tax only, and surplus of savings banks as there determined is property."*

We assume that the decision of the Supreme Court of the state of Minnesota as to the construction of this section of the state is conclusive upon this court.

Relation of a Savings Bank to Its Depositors.

The corporation is merely a trustee for the depositors; it serves no other purpose. The depositors are taxable on their deposits in precisely the same way that they would be in case such deposits were made in any other institution. The real estate of the bank is taxed separately and in the usual and ordinary way. The surplus is property and is taxed as such. It will be seen, therefore, that nothing escapes taxation except only those things which, in the hands of individuals, would be exempt from taxation.

It was the contention of the counsel for the state in the District Court that the tax imposed by said section 839 was in no sense a *property* tax but a franchise tax. In their brief submitted to that court they said:

> "Then we must admit that we cannot tax the Minnesota mortgages or the Territorial bonds. And we most strenuously contend that we are not taxing Minnesota mortgages or the Territorial bonds and are not attempting to. We are not attempting to levy a tax on the tangible property of the bank but are attempting to collect a tax on its franchise; that a tax can be levied on a franchise is well settled."

And, again, the same counsel said:

> "So, admitting for the sake of the argument, that a tax has been paid on the Minnesota mortgages, and that they cannot be taxed again, they, the Minnesota mortgages, are then in the same class with territorial bonds *which we believe are exempt from taxation.*"

GENERAL OPINION OF THE PROFESSION.

These statements of counsel for the state are, we believe, in harmony with the *general opinion of the profession* in regard to the nontaxability of the municipal bonds of the Territories of the United States.

We have been to considerable trouble to ascertain the opinions of the profession in regard to the exemption of such bonds from state taxation. Former Attorney General Wade H. Ellis of Ohio, gave it as his opinion on May 21st, 1908, that bonds issued by a municipality of Indian Territory were not taxable by the state of Ohio. Mr. Tarsney, corporation counsel of the City of Detroit, Michigan, was on February 7, 1906, called upon for a written opinion with respect to the taxability of the bonds of the territory of Hawaii, and he gave an opinion at that time to the effect that such bonds were exempt from taxation.

Mr. Hally, assistant corporation counsel of the city of Detroit, Michigan, on November 23,

1907, gave an opinion that the bonds of the territory of Oklahoma were likewise exempt from taxation by the state of Michigan. In that opinion, he said:

> "A territory of this character is an agency of the government, organized for the purpose of carrying on the work of the general government with respect to those things that are delegated to it by the government. Under our form of government, it is not compulsory upon the United States to establish a local government in the Territories. It could rule directly from the government seat, but whether it governs directly from the governmental seat or delegates the power of governing to the locality comprising the Territory, under certain restrictions, the government carried on is distinctly the government of the United States, and when carried on by the locality for that purpose is nothing more than an agency for the general government."

After calling attention to the rule announced in the early case of *McCulloch v. Maryland,* to the effect that it was not competent for a state to tax any agencies of the general government, and several decisions following that case, Mr. Hally said:

> "So the conclusion is irresistible that the Territory of Oklahoma, being an agency or instrument of the United States government, any tax levied by a state or municipality upon securities issued by that Territory would be invalid as an attempt by the state to control the agency

or instrument of the general government, and would be declared void under the decisions of the Supreme Court of the United States."

On December 31, 1907, Hon. W. H. H. Miller, ex-attorney general of the United States, gave a written opinion to the effect that bonds issued by the city of Oklahoma, in the Territory of Oklahoma, were exempt from taxation by a state, upon the ground that such bonds were issued directly or indirectly under the authority of the United States, and were, therefore, issued by agencies of the United States.

Mr. Miller said:

"The Territories are creatures of the general government; they are the agencies through which it exercises the power granted in subdivision 2 of section 3 of article 4 of the federal constitution, to-wit: 'Congress shall have power to dispose of and make all needful rules and regulations respecting the Territory or other property belonging to the United States.' This provision, it has been held, is plenary,—of the same character as subdivision 18 of section 8, article 1, giving to Congress supreme power over the affairs of the District of Columbia. *Binns v. United States,* 194 U. S. 486. That none of the agencies of the general government can be taxed by state authority without the consent of Congress is also settled law."

We are informed also that Messrs. Dillon and Hubbard, of New York, have on several occasions, given it as their opinion that the bonds of Territories and of the municipalities of Territories are exempt from state taxation. It is a matter of common knowledge that Territorial bonds and the bonds of municipalities of Territories have been in recent years, accepted very generally by savings banks and trust institutions as investments, in the belief that such investments were exempt from state taxation. We think we are perfectly safe in saying that such has been the *general* and *uniform* opinion of the profession up to this date. The Supreme Court of the state of Minnesota is, so far as we know, the first court to hold to the contrary. The latter court has held, in this case, where the question is squarely presented, that such bonds are *not* exempt from state taxation and this is the question which is thus presented to this court for final decision. The decision of the Supreme Court of Minnesota upon this particular point will be found in paragraph 2, on pages 21, 22 and 23 of the transcript of record.

The Status of Territories and their Political Subdivisions.

All that we claimed in regard to the essential nature of Territories and of their political subdivisions is frankly conceded by the court in its decision. The court said:

> "Of course, Territories are political subdivisions of the United States and are not independent sovereignties. Perhaps as comprehensive a statement of their relation to the general government as any is found in *Nat'l. Bank v. Yankton,* 101 U. S. 129, where it was said: 'The territories are but political subdivisions of the outlying dominion of the United States. Their relation to the general government is much the same as that which counties bear to the respective states, and Congress may legislate for them as a state does for its municipal organizations. The organic law of a territory takes the place of a constitution as the fundamental law of the local government. It is obligatory on and binds the Territorial authorities; but Congress is supreme, and for purposes of this department of its governmental authority, has all the powers of the people of the United States except such as have been expressly or by implication reserved in the prohibitions of the constitution. The court further stated that the power of Congress to amend the acts of a territorial legislature was a power incident to sovereignty and continued until granted away. 'Congress may not only abrogate laws of the territorial legislatures, but it may itself legislate directly for the local

government. It may make a void act of the territorial legislature valid, and a valid act void. In other words, it has full and complete legislative authority over the people of the territories and all the departments of the territorial governments. It may do for the Territories what the people, under the constitution of the United States may do for the states.' See also *Snow v. U. S.*, 18 Wall. 317; *Mormon Church v. U. S.*, 136 U. S. 1; *Murphy v. Ramsey*, 114 U. S. 15; *A. T. & S. Fe Ry. v. Sowers*, 213 U. S. 55; *Grether v. Wright*, 75 Fed. 742."

The court further said:

"We must proceed then with the understanding that Oklahoma and Indian Territories were instrumentalities or agencies provided by Congress for the government of the people within their borders, that the municipalities were the agents of the Territories and of the general government to more effectively accomplish the purposes of government in local affairs."

We do not claim for any of the Territories or for their municipalities anything that has not been fully conceded by the decision of the Supreme Court of the state of Minnesota. We do not feel that it is necessary to discuss this question at any length as we could add little, if anything, by citation of or quotation from, other authorities to what has been thus said by that court.

Review of the Federal Decisions.

Before discussing the grounds upon which the Supreme Court of Minnesota has placed its decision, *to the effect that the bonds of municipalities of the Territories of the United States are not exempt from taxation by the state of Minnesota,* we wish to call attention to the previous decisions of this court with a brief review of the facts involved in each case.

The first case, in which the right of a state to tax the agencies or instrumentalities of the federal government was challenged, is *McCulloch v. Maryland,* 4 Wheaton, page 316. This case was decided in 1819. Chief Justice Marshall wrote the opinion.

There the state of Maryland passed an act to the effect that if any bank had established or should, without authority from the state, establish any branch office of discount and deposit or office of pay and receipt in that state, it should not be lawful for it to issue notes in any manner of any other denomination than five, ten, twenty, fifty, one hundred, five hundred and one thousand dollars, and that no note should be issued except upon stamped paper of certain denominations. Then followed provisions for a discount of ten cents upon each five dollar note, twenty cents upon each ten dollar note, thirty cents upon each twenty dollar note, fifty cents upon each fifty

dollar note and so on until a discount of twenty dollars was imposed upon each one thousand dollar note.

The bank upon which this tax was sought to be imposed was a branch office, within the state of Maryland, of the bank of the United States. This branch office was not established by the federal government but wholly through the action of the board of directors of the bank. The capital stock of the bank of the United States was held by individual stockholders and not held in whole or in part by the federal government. Its business was conducted by directors, certain officers of the government being ex-officio directors of the bank. The bank was charged by law with performance of certain fiscal duties for the federal government. It was claimed on behalf of the state of Maryland that the federal government had (a) no power to incorporate or charter the bank and that (b) the bank had no power to establish a branch bank and that if it did, (c) it was a purely private institution and finally that (a) the state of Maryland had the right to impose the tax in question. *This court held squarely against all of the foregoing propositions.*

Weston v. Charleston, 2 Peters, page 449, was the next case involving a similar power of taxation. This case was decided in 1829. There a tax was imposed by authority of the

state of South Carolina on the stock of the United States, issued for loans made to it. This stock was privately owned by a citizen of Charleston. The tax was sustained by the state court of last resort. Weston took the case to this court on a writ of error in which he challenged the power of the state to impose the tax. It was sought in this case to make a distinction between a tax upon bank notes issued by a branch of the bank of the United States and the stock of the United States representing a loan made by a private individual to the United States. *It was contended that the former was a tax upon the means or instrumentalities of the United States, while the latter was merely a tax upon the property of an individual within the state which was no less private property because it represented a loan of money to the United States.*

In the *McCulloch case* the decision by the court was unanimous. In the *Weston case,* two justices dissented. Chief Justice Marshall wrote the prevailing opinion and in it he said:

> "The stock it issues is the evidence of a debt created by the exercise of this power (the power to borrow money). The tax in question is a tax upon the contract subsisting between the government and the individual. It bears directly upon that contract, while subsisting and in full force. The power operates upon the contract, the instant it is framed, and must

imply a right to affect that contract. If the states and corporations throughout the union possess the power to tax a contract for the loan of money, what shall arrest this principle in its application to every other contract? What measure can government adopt, which will not be exposed to its influence?"

And, again, he said:

"Can anything be more dangerous, or more injurious than the admission of a principle, which authorizes every state and corporation in the Union which possesses the right of taxation to burden the exercise of this power (the power to borrow money), at their discretion? If the right to impose the tax exists, it is a right which in its nature acknowledges no limits. It may be carried to any extent, within the jurisdiction of the state or corporation which imposes it, which the will, of each state and corporation may prescribe."

In referring to the *McCulloch case,* he said:

"The question decided in that case bears a near resemblance to that which is involved in this. It was discussed at the bar in all its relations, and examined by the court with its utmost attention. We will not repeat the reasoning which conducted us to the conclusion thus formed; but that conclusion was, that '*all subjects over which the sovereign power of a state extends, are objects of taxation;* but those over which it does not extend, are, upon the soundest principles exempt from taxation. 'The sovereignty of a state extends to everything which exists by its own au-

thority, or is introduced by its permission,' but not 'to those means which are employed by congress to carry into execution powers conferred on that body by the people of the United States.' 'The attempt to use' the power of taxation 'on the means employed by the government of the Union, in pursuance of the constitution, is itself an abuse, because it is the usurpation of a power which the people of a single state cannot give.' "

He then added:

"We retain the opinions which were then expressed. A contract made by the government in the exercise of its power to borrow money on the credit of the United States, is undoubtedly independent of the will of any state in which the individual who lends may reside, and is, undoubtedly, an operation essential to the important objects for which the government was created. It ought, therefore, on the principles settled in the case of *McCulloch v. State of Maryland,* to be exempt from state taxation, and consequently, from being taxed by corporations deriving their power from states."

With reference to the distinction sought to be made between the *McCulloch case* and the *Weston case,* he said:

"It has been supposed, that a tax on stock comes within the exceptions stated in the case of *McCulloch v. State of Maryland.* We do not think so. The bank of the United States is an instrument essential to the fiscal operations of the government, and the power which might be ex-

> ercised to its destruction was denied. But property acquired by that corporation in a state was supposed to be placed in the condition with property acquired by an individual. The tax on government stock is thought by this court to be a tax on the contract, a tax on the power to borrow money on the credit of the United States, and consequently, to be repugnant to the constitution."

The argument of the two dissenting justices is, we think, similar to that used by the judge of the Supreme Court of the state of Minnesota, writing the opinion in the present case, to which we shall later invite the attention of the court.

In 1862, the case of *Bank of Commerce v. New York City,* 2 Black, 620, was taken to this court on a writ of error to the Court of Appeals for the state of New York. There the claim was made that the tax imposed was upon the nominal capital of the bank, and, consequently, a *franchise* tax, as distinguished from a tax upon the *property* of the bank. This court, however, held that whatever form the assessment might take, it was in its last analysis, based upon the valuation of the assets of the bank, and consequently, a *tax upon the property of the bank;* and, further, that *such proportion of its capital as was invested in the stocks, bonds or other securities of the United States was not liable to taxation by the state*

and *was properly deducted by the bank from its return for taxation.* This court said, referring to these government securities:

> "This stock then is held by the bank the same as such stocks are held by individuals, and alike subject to taxation or exemption by state authority."

An attempt was made in the last case to distinguish it from the *Weston case,* upon the ground that, in the latter case, the tax was imposed in terms upon the stock itself and was on its face a discrimination against the stock issued by the government and other stock. Referring to this attempted distinction, this court said:

> "This difference consists in the circumstance that the tax in the former case was imposed on the stock, *eo nomine,* whereas in the present it is taxed in the aggregate of the tax payer's property, and to be valued at its real worth in the same manner as all other items of his taxable property. The stock is not taxed by name, and no discrimination is made in favor or against it, but is regarded like any other security for money or chose in action."

The court quotes from and approves of the opinions rendered in the *McCulloch case* and the *Weston case.* The court cites with approval the following statement made by the chief justice in the *McCulloch case*:

> "If we measure the power of taxation residing in a state, by the extent of sov-

> ereignty which the people of a single state possess, and can confer on its government, we have an intelligible standard, applicable to every case to which the power may be applied. We have a principle which leaves the power of taxing the people and property of a state unimpaired; which leaves to a state the command of all its resources, and which places beyond its reach, all those powers which are conferred by the people of the United States on the government of the Union, and all those means which are given for the purpose of carrying those powers into execution. We have a principle which is safe for the states, and safe for the Union."

Speaking of the respective powers of the federal and state governments, the court said:

> "Each is sovereign and independent in its sphere of action and exempt from interference or control of the other, *either in the means employed for functions exercised and influenced by public and political spirit on both sides*, a conflict of authority need not occur or be feared."

In 1867, the case of *Society for Savings v. Coite*, 6 Wallace, page 594, was decided by this court. Under the law of Connecticut, a tax equal to three-fourths of one per cent on the total amount of the deposits, on a given day, of savings banks was imposed. The savings bank in this case deducted from the amount of deposits returned, something over $500,000 invested in government securities. Suit was brought by the state treasurer to recover the

tax. The Supreme Court of Connecticut held that it was not a property tax but a tax on the franchise or on its right to do business within the state and this construction of the state statute was accepted by this court although the chief justice and two of the other justices dissented upon the ground that the tax was in reality one on the property of the bank and not on its franchises.

In 1868, *The Banks v. The Mayor,* 7 Wallace, page 16, and *Banks v. Supervisors,* 7 Wallace, page 26, came before this court. It was held in the former case that certificates of indebtedness, bearing interest, issued by the United States to its creditors for supplies furnished to it, in carrying on the war, were beyond the taxing power of the states. There it was contended that such certificates were not within the reason of the rule, exempting government bonds and other securities, issued for the purpose of borrowing money on the credit of the government. It was insisted that such certificates were issued merely in payment for supplies and should not be regarded as though issued for a loan of money. This was the view taken by the Court of Appeals of the state of New York, but it was reversed by this court. The court said:

> "The principle of exemption is, that the states cannot control the national government within the sphere of its constitu-

> tional powers—for there it is supreme—and cannot tax its obligations for payment of money issued for purposes within that range of powers, because such taxation necessarily implies the assertion of the right to exercise such control."

In the latter case the state of New York had undertaken to tax the legal tender notes of the government issued under the act of March 3, 1863. It was contended on behalf of the state that these notes were in fact money and intended and designed to circulate as such and, consequently, taxable as money, in precisely the same way as other forms of currency. On behalf of the federal government, however, it was contended that they were not money in the proper sense; that they were merely substitutes for money, being the obligations of the government to pay money, and that their value would be injuriously affected, as a governmental means, by state taxation.

It was conceded by this court that the same inconvenience would *not* arise from the taxation of these notes as would arise from taxation of bonds and other interest bearing obligations of the government, but it further said:

> "We cannot say that no embarrassment would arise from such taxation. And we think it clearly within the discretion of Congress to determine whether, in view of all the circumstances attending the issue of the notes, their usefulness, as a means of carrying on the government, would be

> enhanced by exemption from taxation; and within the constitutional power of Congress, having resolved the question of usefulness affirmatively, to provide by law for such exemption."

In *Plummer v. Coler,* 178 U. S., 115 (1899), it was attempted to carry the doctrine of exemption of government securities from taxation, to the point that the transmission of such securities by bequest or by inheritance was not subject to a state inheritance tax. This court, however, held that the right to take by will or inheritance was a matter entirely within the control of the states; and that an inheritance tax was one imposed upon the right or privilege of so taking and not upon the property transmitted. In an elaborate opinion, the previous decisions of this court bearing upon the various phases of attempted taxation of government securities were reviewed and the doctrine of those cases approved.

In *Home Savings Bank v. City of Des Moines,* 205 U. S. 503, this court again reviewed the authorities bearing upon the question of taxation by states of various forms of government securities and the distinctions which had been drawn between a franchise tax, so-called, and a property tax, and held that the statutes of Iowa imposed, in fact, a *property* tax and not a *franchise* tax upon the bank and because the tax imposed was a prop-

erty tax, the bank had the right to deduct, in making its return, from its assets, all government securities held by it.

We wish to notice in this connection one other case, *Hibernia Savings & Loan Society v. San Francisco,* 200 U. S. 310, inasmuch as this case is cited by the Supreme Court of Minnesota in its decision, as having, at least some significance, with reference to the case at bar. We think, however, that this case is clearly not within the principle of exemption which has been announced and adhered to by this court in the cases heretofore cited. There the *Hibernia Savings & Loan Society* deducted from its return, two checks signed by the treasurer of the United States and addressed to the treasurer or assistant treasurer of the United States for $120,000 and $1,875 respectively, *such checks being in payment of interest on government bonds.* This court held that such checks were, in fact, given, as a matter of convenience, in the place of cash and *were designed and intended as payment,* upon which, by due presentment, the actual cash would be handed over to the society; and that consequently, such checks were not within the reason of the rule or doctrine announced in the cases above cited.

The case of *Grether v. Wright,* 75 Federal Reporter, page 742, decided by the Circuit Court of Appeals, Sixth Circuit, in 1896,

comes very near, we think, to determining the precise point involved in this controversy. There the state of Ohio undertook to tax bonds of the District of Columbia, held by one of its citizens. These bonds were issued by the District of Columbia under an act of Congress authorizing the funding of the floating debt of the District. The federal government guaranteed one-half of the bonds, and pledged the faith of the federal government that appropriations as contemplated by the act should be made and taxes therefor levied upon the property of the District necessary to provide the revenues with which to pay the interest on said bonds, and ultimately one-half of the principal. The act also provided that the bonds should be exempt from taxation by federal, state or municipal authority. It was contended on behalf of the state of Ohio that such exemption did not extend to the various states, but only meant that neither the federal government nor the state or District of Columbia would tax such bonds.

It was next contended on behalf of the state that even if the exemption extended to the states, Congress was without power to impose such exemption, and this is the principal question discussed by the Circuit Court of Appeals.

After reviewing the cases to which we have already called attention, Judge Taft said:

"From this review of the cases, it is evident that, where Congress lawfully directs the issue of evidences of indebtedness in the exercise of any power derived by it from the constitution, whether it be by virtue of the grant of power to borrow money on the credit of the United States, or of any other grant, such evidences of debt are exempt from state taxation, or at least may be exempted therefrom if Congress sees fit to give them this quality. Why, then, are the bonds here in controversy not within the exempting power of Congress? The answer made by counsel for the appellant is that they are bonds, not of the United States, but of the municipality known as the District of Columbia, a local agency of the national government, and that the bonds were issued by that municipal agent for a local purpose. The argument is, if we rightly comprehend it, that when the congress of the United States establishes a municipal corporation in the District of Columbia, and gives it power to issue bonds for local purposes, it is exercising the power of exclusive legislation over the District of Columbia conferred by the seventeenth clause of the eighth section of the first article of the constitution, and is legislating, and can legislate, only as a state would legislate in conferring similar powers upon one of its municipalities, and that this power and the incidental means used in its exercise are to be as much confined in their operation to the territory of the District as is a state's power to the territory within its borders; that bonds issued by the District of Columbia are mere local means for the exercise of this local power; and that Congress can no

more attack the quality of non-taxability to such securities beyond the boundaries of the District of Columbia than a state can give to securities of its municipalities, when held in other states, the quality of exemption from taxes therein imposed. The argument is enforced by referring to the case of *Bonaparte v. Tax Court*, 104 U. S. 592, wherein it was held that the federal constitution did not prohibit a state from taxing the bonds of another state, held within the taxing state, although made exempt from taxation by the state issuing them. The reasons for the holding were that the federal constitution did not restrict one state from taxing the bonds of another, and that the tax exemption laws of one state could not be given extra-territorial effect. By an alleged parity of reasoning, it is urged upon us that, as Congress cannot give extra-territorial effect to the legislation passed by it in the government of the District of Columbia, it cannot exempt the bonds of the District. The argument is ingenious, but the distinction taken can no more be supported than those which the Supreme Court has brushed away in the decisions on the subject already cited."

And, again, the same judge said:

"The division of the powers in the constitution between the states and the general government is such that neither the states nor the United States are entitled to impede or obstruct the exercise of the powers accorded by the constitution to the other. It was, therefore, held in the *Income Tax Case* (*Pollock v. Trust Company*, 157 U. S. 429), that the United

States could not tax the bonds of a municipality of a state, because it would thereby be interfering with and obstructing an instrumentality of a state government. See also *Mercantile Bank v. New York,* 121 U. S. 138; *United States v. Railroad Company,* 17 Wall. 322. It is difficult to understand why the same principle does not require that the bonds of the local municipal agents of the United States should be exempt from taxation by the state government."

The only point of difference which can be made between the *Grether case* and the one at bar is, that the bonds in the former case were issued by the District of Columbia under authority of direct legislation by Congress, while, in the case at bar, the bonds in question were issued by municipalities of the two territories in question under authority of the legislatures of such territories. In the *Grether case,* the bonds of the District of Columbia were guaranteed by the government as to one-half thereof, and, as to the balance, the government agreed that it would cause adequate taxes to be levied upon the property of the District, with which to pay the interest and provide a sinking fund for their ultimate retirement. The legislatures of the two territories in question exercised, under authority of Congress, delegated powers. The federal government, with reference to the territories, is sovereign, while the territories and their various

political subdivisions are mere agencies or dependencies. Congress may govern the Territories directly or it may do so indirectly, through Territorial legislatures, or otherwise. As has been stated by this court, it may at any time do away with the territorial governments. It may at any time make a *void* act of the legislatures *valid,* or a *valid* act *void.* It is at all times with respect to such territories and its subdivisions supreme. The territorial governments and their various subdivisions are necessarily mere agencies, or instrumentalities, of the federal government.

In speaking of the contention of the state of Ohio that the District of Columbia was merely a municipality and not in the proper sense an agency of the federal government, Judge Taft, in the *Grether case,* said:

> "The fundamental error, as we conceive it, in the argument of the appellant, is the assumption that the organization of a municipality and the endowing it with the usual powers of a city under the clause of the constitution above quoted were for the peculiar benefit of the persons living within the district, and thus for a purely local purpose. Such a view misses the whole object of the constitutional grant."

Substantially the same may be said with reference to the decision of the Supreme Court of Minnesota in the present case. It seems to us that that court has misconceived and misapplied the true doctrine which this court has

in so many cases heretofore announced. Starting with the proposition that, with reference to the territories, the federal government is supreme and sovereign, every act done by either the territorial governments or their political subdivisions is in fact the act of the federal government. It is the act of an agent for and on behalf of the principal. If Congress in its wisdom had seen fit to legislate directly for these territories, and authorize, as did their legislatures, the issuance of these bonds, then, we think, it would be quite impossible to say that the bonds so issued were not the operations of the federal government, or the means or instrumentalities by which the federal government sought to accomplish certain purposes. Can the issuance of these bonds be regarded as any less or any different, because they are issued under delegated power from Congress, instead of under the authority of direct legislation. Such bonds would be absolute nullities if they were issued by the municipalities, without delegated authority therefor or in violation of any law of Congress. The issuance of these bonds was the direct act of the municipalities. The municipalities were organized under authority of the respective legislatures and the legislatures received their powers solely from Congress. The issuance of the bonds, therefore, was the actual although the indirect act of the federal government.

VIEWS OF THE MINNESOTA SUPREME COURT.

The Supreme Court of Minnesota, in this case, said:

> "In a broad sense they (the municipalities) were agencies of the territories, and were conducting those enterprises for the United States government. Those people were exercising the right of local self-government under the authority of the United States; but the United States was not responsible for all their acts, and it could not be claimed that their obligations were guaranteed by the United States. And if the bonds they issued were sold on the strength of the municipal credit alone, *how is the power of the government to borrow money on the credit of the United States affected by their taxation by the states?*"

Precisely the same argument was urged, and, we think, with much greater reason, in the McCulloch case. There Congress authorized the incorporation of the bank of the United States. It neither owned nor controlled the capital stock thereof. The actual management of the bank was in the hands of a board of directors selected by the stockholders. Under the act of incorporation, the bank was charged with the performance of certain fiscal duties for the government. It was there contended that these duties were merely incidental, and that taxation of the property of the bank by the states could not be presumed to injurious-

ly affect either the credit or the operations of the federal government, and it must be conceded that from a practical standpoint there was much force in the argument. But this court then held and ever since has held that it is not a question of how much injury in a given case taxation by the state may do, but rather whether such taxation *may tend* to impair the power, operations or instrumentalities of the federal government.

The Supreme Court of Minnesota further said:

> *"If this tax cannot be imposed, then these bonds command a higher price on the market, and the municipalities of the states are placed at a disadvantage in disposing of their bonds. If the tax may be imposed, then such municipal bonds take their proper market value on their merits in the money markets of the world."*

We respectfully submit that this argument is entirely inadmissible, if, in fact, the municipalities of territories are to be considered, as we think they always have been, mere agencies or instrumentalities of the federal government.

Again, that court said:

> *"If the true test for determining the right of taxation by the states is not the fact of agency, but whether it will operate to impair or interfere with such agencies in performing the functions by which they are designed to serve the United States, then we must inquire whether the muni-*

cipalities in question will be interfered with in the performance of those functions by taxing their bonds in the hands of purchasers in this state."

This statement necessarily implies that there are different kinds of agencies with respect to territories and their political subdivisions, some of which may not be interfered with by the states through taxation, while others may be so interfered with. We must infer from the language of the Supreme Court of Minnesota that issuing bonds by a municipality of a territory for local improvements is such an agency as is not within the rule for which we are contending. We must infer that if in fact the bonds are issued for local improvements, that is, such improvements as may beneficially affect the inhabitants only, then they are not exempt from taxation by the states, but if, in whole or in part, the bonds are issued by either the territories or their political subdivisions for some improvement within the territory or within the municipality which may directly or indirectly benefit or affect the federal government at large, then a different rule should apply. We have been unable to find any warrant for any such distinction in any of the cases which we have examined.

Possibly one other construction may be placed upon the language of the Supreme

Court of Minnesota just quoted, and that is that the question will always be whether or not the taxation by the state in a given case does in fact interfere with or injuriously affect the performance of those functions delegated directly or indirectly by the federal government to the municipalities. Such a view, we submit, is inadmissible. If the *power* of the state to tax the bonds is conceded, then the *extent* of that taxation is beyond the control of the federal government. Taxation in a given case may injuriously affect the negotiation of the bonds but slightly, while, in another case, taxation might be carried to the point of actual prohibition of their negotiation or sale.

It was intimated by the Supreme Court of Minnesota upon the argument of this case, that the state courts would be loth to admit any such exemption with respect to the municipalities of territories when no such exemption existed with reference to the municipalities of sister states, and the same idea is prominent in the decision of the court.

THE FEDERAL GOVERNMENT CANNOT TAX THE BONDS OF THE MUNICIPALITIES OF A STATE.

A proposition which was urged by us, both in our briefs and at the oral argument, upon the attention of the Supreme Court of Minne-

sota, which seems to us to be decisive of this case, is entirely ignored by the court in its decision. While we have been able to find no case which directly holds that the bonds of a municipality of a territory are exempt from taxation by the states, there are decisions of this court, holding that it is incompetent for the federal government to tax the bonds of municipalities of a state. We contend that it is just as incompetent for a state to tax the bonds of the municipalities of a territory as it is for the federal government to tax the bonds of the municipalities of the state. This proposition, it will be noticed, is nowhere mentioned or discussed in the decision of the Supreme Court of Minnesota. It is one which we think ought to be controlling here and to which we respectfully invite the attention of this court.

In *Mercantile Bank v. New York*, 121 U. S. 138 (decided April 4, 1887), this court said:

> *"Bonds issued by the state of New York, or under its authority by its public municipal bodies, are means for carrying on the work of the government, and are not taxable even by the United States, and it is not a part of the policy of the government which issues them to subject them to taxation for its own purposes."*

What is here said about the public municipal bodies of the state in respect to their relation to the state is equally true of the public

municipal bodies of the territories,—*they are means for carrying on the work of the federal government.* Municipalities are merely subdivisions of the state and are doing the work of the state under delegated authority. Precisely so are municipalities of territories. They are, under delegated authority, doing the work of the federal government, and are simply the means, devised by the federal government, for carrying on the work of that government.

Again, in *Pollock v. Farmers Loan & Trust Company,* 157 U. S. 429, this court cited with approval the decision in the *Mercantile Bank case,* and there said:

> "*The question in Bonaparte v. Tax Court,* 104 *U. S.* 592, *was whether the registered public debt of one state, exempt from taxation by that state or actually taxed there, was taxable by another state when owned by a citizen of the latter, and it was held that there was no provision of the constitution of the United States which prohibited such taxation. The states had not covenanted that this could not be done, whereas, under the fundamental law, as to the power to borrow money, neither the United States on the one hand, nor the states on the other, can interfere with that power as possessed by each and an essential element of the sovereignty of each.*"

The point was also made in the *Pollock case* that the tax imposed by the federal govern-

ment was not a tax upon the *municipal bonds* of New York, but only upon the *income* therefrom, but this court said:

> *"We think the same want of power to tax the property of revenues of the states or their instrumentalities exists in relation to a tax on the income from their securities, and for the same reason, and that reason is given by Chief Justice Marshall in Weston v. Charleston, 2 Pet. 449, 468, where he said: 'The right to tax the contract to any extent, when made, must operate upon the power to borrow before it is exercised, and have a sensible influence on the contract. The extent of this influence, depends on the will of a distinct government. To any extent, however inconsiderable, it is a burden on the operations of government. It may be carried to an extent which shall arrest them entirely. * * * The tax on government stock is thought by this court to be a tax on the contract, a tax on the power to borrow money on the credit of the United States, and consequently to be repugnant to the constitution.'"*

And, again, in same case:

> *"Applying this language to these municipal securities, it is obvious that taxation on the interes' therefrom would operate on the power to borrow before it is exercised, and would have a sensible influence on the contract, and that the tax in question is a tax on the power of the states and their instrumentalities to borrow money, and consequently repugnant to the constitution."*

It will be noticed that no distinction is made between the municipalities of a state and the state itself, and none, we think, should be made. It is all a matter of state policy whether the state shall itself borrow the money with which to make public municipal improvements, or delegate such power to the various municipalities. In most, if not all, states, power for such purposes is delegated to the municipalities. Whether the money is borrowed on the credit of the state itself, or simply on the credit of the municipalities, make no difference. The operations are still those of the state itself. Precisely for the same reasons the acts of the municipalities of the territories are the acts of the territories and the acts of the latter are, through the agency of delegated power, the acts of Congress. The money is borrowed for *public municipal improvements* through the agency of the municipalities, by authority from Congress itself. Suppose Congress should see fit in a given case to authorize the municipalities of a territory to borrow money for municipal improvements and pledge their credit therefor, could it be said that this was not an operation of the federal government, simply because that government did not *guarantee* the payment of the loans or the interest thereon. *Is it in fact any argument, either upon principle or authority, to say that because the credit of*

the federal government is not pledged for the payment of the loan that the loan is not an operation of the federal government? If the credit of the federal government had been in terms pledged in the case at bar for the payment of these bonds, or the interest thereon, then the case would fall squarely within the decision of the Circuit Court of Appeals of the sixth circuit, in the *Grether case, supra*, and would also be within the doctrine which seems to have been announced by the Supreme Court of the state of Minnesota in the present case. That court seems to have held to the view that because taxation of these municipal bonds *will not appreciably affect the power of the federal government to borrow money on its own credit*, therefore, the bonds are not exempt. If such a distinction could possibly be made with reference to the bonds of the municipalities of territories, then it seems to us that a like distinction should have been made between *the bonds of the municipalities of a state, where the credit of the state was not directly pledged for their payment, and the bonds of a state itself where such credit was pledged.*

It seems to be conceded, as we think it must be, that taxation of these bonds by the states would sensibly affect the power of the municipalities to borrow money, and if those municipalities are, as it seems to be conceded they

are, merely agencies or instrumentalities of the federal government, then the operations of such federal government are directly affected by such power of taxation. In the *Pollock case,* this court said that the attempted tax on the *income* from the bonds of the municipalities of the state, as well as of the state itself, was a tax on the *power* of the states and their instrumentalities, to *borrow money,* and consequently was repugnant to the constitution of the United States. *It seems to us equally clear that the tax in question by the state of Minnesota is a tax on the power of the territories and their instrumentalities to borrow money, and, because those territories and their various instrumentalities are but the mere agencies or dependencies of the federal government, such tax must be repugnant to the constitution of the United States.*

It seems clear to us that the rule as to the want of power in the federal government to tax the municipal bonds of a state should be applied, for the same reasons and upon the same grounds, with respect to the want of power in the states to tax the municipal bonds of the territories of the United States. As before stated, it will be noticed that no discussion of, or even reference to these decisions with respect to the want of power in the federal government to tax the municipal bonds of a state is made in the decision of the Supreme

Court of Minnesota in the present case.

In the *United States v. Railroad Company*, 17 Wallace, 322, this court said:

> *"The right of the states to administer their own affairs through their legislative, executive, and judicial departments, in their own manner through their own agencies, is conceded by the uniform decisions of this court and by the practice of the federal government from its organization. This carries with it an exemption of those agencies and instruments, from the taxing power of the federal government. If they may be taxed lightly, they may be taxed heavily, if justly, oppressively. Their operation may be impeded and may be destroyed, if any interference is permitted. Hence, the beginning of such taxation is not allowed on the one side, is not claimed on the other."*

This, we take it, means simply that the states will not be permitted to tax the agencies or instrumentalities of the federal government, and that power to tax the agencies and instrumentalities of the state governments is not claimed on the part of the federal government.

And, again, in the same case, this court said:

> *"A municipal corporation like the city of Baltimore, is a representative not only of the state, but is a portion of its government power. It is one of the creatures, made for a specific purpose, to exercise within a limited sphere the powers of the state. The state may withdraw these local powers of government at pleasure, and*

may, through its legislature or other appointed channels, govern the local territory as it governs the state at large. It may enlarge or contract its powers or destroy its existence. As a portion of the state in the exercise of a limited portion of the powers of the state, its revenues, like those of the state, are not subject to taxation."

All of this language, we think, is equally applicable to the municipalities of a territory. A territory is simply a creature of the federal government, exercising delegated power within limited spheres prescribed by the federal government. A territorial municipality is, again, a mere creature of a territory exercising delegated power within more limited spheres. The federal government may withdraw these powers which have been delegated to the territory, and, through the territorial government, to the municipalities, and may govern the municipalities as it may govern the territory at large. It may in fact enlarge or contract the powers of the territories, or of their municipalities, or even destroy their existence. As a portion of the territory, and as a creature, through delegated power, of the federal government, the municipality exercises a portion of the powers of the federal government, and its operations for raising revenues for local public improvements should not be subjected to taxation by the states.

A decision in our favor upon this point would completely dispose of the case, as a deduction of these bonds will leave no *surplus* to be taxed.

II.

So much of section 3 of chapter 328, laws of 1907, as attempts to hold banks, savings banks and trust companies to double taxation on mortgages upon real estate in the state of Minnesota, at the same time relieving all mortgages upon such real estate owned by others than banks, savings banks and trust companies from all other taxation thereon than the mortgage registration tax, provided for by the act, is unconstitutional, as being in violation of section 1, article 14, of the amendments to the constitution of the United States.

Sections 1, 2 and 3, of chapter 328, laws of 1907 (the only ones here material), are set forth at length in Exhibit B of the appendix hereto.

Sections 839 and 840 of the revised laws of Minnesota, 1905, are set forth in Exhibit C of the appendix hereto.

Sections 1, 3 and 4, of article 9 of the state constitution, which were in full force when above sections 838, 839 and 840 were enacted and until December 27th, 1906, are set forth in Exhibit D of the appendix hereto.

Section 1, article 9, of the state constitution was adopted November 6, 1906, and promulgated Decemebr 27, 1906, and is set forth in Exhibit E of the appendix hereto.

The various provisions above referred to are material to the point about to be discussed. Section 2, of chapter 328, of the laws of 1907, imposes a tax of fifty cents upon each one hundred dollars of the principal debt or obligation secured by any mortgage upon real property situated within the state, and must be paid at the time when any such mortgage is tendered to the register of deeds for record. Section 3 of the same chapter provides that such tax shall be in lieu of all other taxes on such mortgages and on the debts or obligations thereby secured; but expressly provides that such exemptions shall not apply to banks, savings banks and trust companies. In other words, such institutions must, under section 2, pay the registration tax precisely as all other persons or parties and in addition thereto, such other taxes as are imposed by the general provisions of the law, while all other persons and parties other than the three enumerated are expressly exempted from all other forms of taxation as to such mortgages. The obvious effect of this law is to compel banks, savings banks and trust companies to pay the registration tax on mortgages and also the general taxes applicable thereto.

Plaintiff in error's contention is that the attempted exception of banks, savings banks and trust companies from this exemption from all other forms of taxation is a clear discrimination against such institutions and is in violation of section 1, article 14, of the amendments to the constitution of the United States.

The decision of the Supreme Court of the state of Minnesota has brought the question here involved within a very narrow compass. That court, in speaking of the mortgage registration tax, said:

> "The act applies to banks, savings banks and trust companies although the mortgages they hold are not exempt from ordinary taxation. The question then is, did the legislature adopt an arbitrary basis of classification such as to come within the prohibition in our constitution or to infringe upon that provision of the federal constitution which prohibits the passage of laws by a state which deny to any person within its jurisdiction the equal protection of the laws."

While the act in terms excepts from the exemption *banks, savings banks* and *trust companies,* the Supreme Court of Minnesota declined to consider the unconstitutionality of the act as applied to *banks* and *trust companies,* saying:

> "The exception from the exemption includes banks and trust companies, but

> we are concerned at this time with the status of savings banks only and we need not consider whether the classification is proper for those institutions."

The significance of the last remark will be noticed when we come to consider the fact that banks (state and national) are taxable under the provisions of section 840 of the revised laws of Minnesota, 1905, and trust companies under the provisions of section 838 of said revised laws. Savings banks, together with private bankers and brokers, are taxed under the provisions of section 839 of the revised laws.

Treating the question as one of classification, the Supreme Court of Minnesota held that said section 3 was not repugnant to the provisions of the federal constitution because the property of savings banks was not taxed in the same way as the property of individuals or of other corporations (The decision of the Supreme Court of Minnesota on this point will be found commencing at the bottom of page 23 and ending at the top of page 26, transcript of the record). That court recognizes the rule that all persons subject to legislation must be treated alike under like circumstances both in the privileges conferred and the limitations imposed; and further that the mere fact of classification is not sufficient to relieve a statute from the objection that it violates the equality clause of the 14th amend

ment, but that such classification must appear to be based upon some reasonable ground,—upon some difference which bears a just and proper relation to the attempted classification. Equal protection of the law means equal exemption with all others of the same class, and in the same circumstances, from all charges, obligations and burdens.

In speaking of savings banks, the Minnesota Supreme Court said:

> "The purpose (of their organization) seems to have been to provide a special method for persons of small means to accumulate their savings. But because it may have been found profitable to invest the deposits in mortgages or real estate in this state is not a sufficient reason why savings banks should not pay the registry mortgage tax and at the same time submit to the inclusion of such mortgages among the assets for the purpose of ascertaining the surplus. This exception could only amount to a discrimination or double taxation if these institutions stood upon the same footing as other banks and corporations."

The Supreme Court of Minnesota has squarely held in this case that section 839 provides for a property tax only and that the surplus of savings banks, as determined by said section 839, is property.

The same court has also held in this case that savings banks "do not enjoy any special rights or privileges, independent of the corpo-

rate right to exist, and the intention to tax such corporate franchise does not appear." The whole case, therefore, turns upon what the Supreme Court of Minnesota terms a difference between the method of taxing savings banks and persons, other corporations and banks.

That there is, in fact, a slight difference in the method or plan of taxation, or rather in the method or plan of determining the amount of property to be taxed in the case of savings banks, and the method or plan for similar purposes in respect to other corporations and banks may be conceded, but an examination of said sections 838, 839 and 840 will show, as we think, at a glance, that this difference in the method or plan applicable to savings banks is made on account of the nature of savings banks and is not intended or designed as a special privilege conferred or attempted to be conferred upon such institutions.

The obvious purpose and policy of all three sections is to tax substantially all the property of the corporations named. It must be presumed that these sections of the statute were intended to be in harmony with the express provisions of the state constitution which were in force at the time the same were passed.

Section 1 of article 9, of the state constitution, read as follows:

> "All taxes to be raised in this state shall be as nearly equal as may be and all property on which taxes are to be levied shall have a cash valuation and be equalized and uniform throughout the state."

Section 3 of the same read as follows:

> "Laws shall be passed taxing all moneys, credits, investments in bonds, stocks, joint stock companies or otherwise, and also all real and personal property, according to its true value in money."

Section 4 of the same article provided as follows:

> "Laws shall be passed for taxing the notes and bills discounted or purchased, moneys loaned, and all other porperty, effects, or dues of every description, of all banks and of all bankers, *so that all property employed in banking shall always be subject to a taxation equal to that imposed on the property of individuals.*"

These provisions of the constitution remained in force until December 27, 1906, when they were superseded by what is known as section 1 of article 9 (see Exhibit E).

It is in the light of these constitutional provisions that sections 838, 839 and 840 of the revised laws of Minnesota, 1905, must be construed. The Supreme Court of Minnesota said in this case, in speaking of the taxation of banks, that:

> "It will not be presumed that the legislature intended to ignore the constitu

tional mandate which requires all the property of banks to be taxed" (See top of page 21, transcript of record).

Nor will it be presumed that, in adapting the various provisions for the assessment and levying of taxes to persons and different classes of corporations, the legislature was seeking to violate the spirit of these constitutional mandates. It must be presumed, in the absence of clear evidence to the contrary, that in adapting the various methods to the different classes, *equality* and *uniformity* of taxation as required by the constitution are being sought.

In the present case, the Supreme Court of Minnesota sustains the *double taxation* of savings banks upon the ground that it is competent for the state to put such institutions in a class by themselves, because under the general provisions of the law (section 836), special consideration is shown savings banks with respect to their taxation. In other words, the gist of the decision is simply this: Savings banks may be taxed upon their mortgages, under the provisions of the mortgage registration act, and also under the previous general provisions for taxation, although all other persons and corporations are exempted from taxation thereon, because savings banks under the general provisions are taxed in a different way from individuals and other cor-

porations. This, under the provisions of the state constitution and the previous decisions of the Supreme Court of Minnesota thereon, we think, is an obvious fallacy.

It has been held by the Supreme Court of Minnesota and very generally by other courts that the equality and uniformity of taxation imposed by the legislature is a substantial *equality* or *uniformity* and not an *absolute* or *mathematical* one, and yet equality, as nearly as may be, must be aimed at in every law imposing a tax. *State v. Canda C. C. Company,* 85 Minn. 457.

Whatever method of assessment or basis of apportionment may be adopted, it must include the idea of equality. *Nooman v. Stillwater,* 33 Minn. 198. While equality, as nearly as may be, is required in the distribution of the public burdens, yet the course to be pursued and the means or methods to be used under this rule must be left to the discretion of the legislature, *State v. Pioneer Savings & Loan Company,* 63 Minn. 80. The constitutional requirement of equality applies to all forms of taxation whether of persons or property, *Faribault v. Misener,* 20 Minn. 396.

While, under these provisions of the old constitution, all taxation must be equal and uniform, it was not necessary that all persons or corporations must be taxed in the same way or according to the same methods. It has

been uniformly held by the Supreme Court of Minnesota that the legislature might adopt different modes of assessment for different forms of property or for different kinds of institutions or for persons exercising different kinds of trade, provided always that the natural result is a substantial equality and uniformity of taxation, *State v. Weyerhauser,* 68 Minn. 353.

It must be presumed, therefore, that in undertaking to provide for the taxation of certain corporations and individuals by the provisions of sections 838, 839 and 840, the legislature had in mind the mandates of the state constitution, to-wit: substantial equality and uniformity, and also that all property employed in banking should be "subject to a taxation equal to that imposed on the property of individuals." This, it seems to us to be too clear to admit of serious discussion. If, in fact, the taxation of certain corporations under section 838 should lead to a substantial discrimination either in their favor or against them when compared with the provisions of sections 839 and 840, then such scheme of taxation would be in violation of the state constitution, *State v. Duluth Gas and Water Company,* 76 Minn. 96. This has been the rule of construction whether the scheme of taxation was discriminatory either as to the rate imposed or as to the method or plan of assess-

ment, provided always the discrimination was a substantial one and not merely such a discrimination as might result in an exceptional case.

So far, then, as section 839 is concerned, it must be presumed that it was enacted by the legislature with the idea and for the purpose of providing a scheme of taxation for savings banks that would result in substantial equality of taxation of such institutions with all others. If it be assumed that section 839 was, in fact, discriminatory in favor of savings banks, then it was clearly unconstitutional when it was passed. *State v. Pioneer Savings and Loan Company,* 63 Minn., page 80. It is not to be supposed that section 839, which has been on the statute books for many years, is to receive one construction prior to the constitutional amendment of December 27th, 1906, and a different one thereafter.

The Supreme Court of Minnesota (see top of page 28, transcript of record) says:

> "Chapter 328, laws of 1907, was evidently drawn with reference to this advantage and if these institutions (savings banks) had acquired a valuable advantage in business by reason of this privilege, that fact was a sufficient reason for attempting a more equitable distribution of the burdens of taxation by excepting them from the exemption in the mortgage tax law."

In view of the fact that sections 838, 839 and 840 have been since the revision of 1878, in substantially the same form as they now appear and their constitutionality has not been questioned when it is reasonably certain that if it had been supposed that section 839 was discriminatory in favor of savings banks, such question would have been raised in some at least of the thousands of cases which undoubtedly have arisen wherein it was involved. It has been generally supposed that those three sections tended to substantial equality and uniformity of taxation with reference to the persons and corporations to whose property they were directed.

The present decision of the Supreme Court of Minnesota can mean, in substance, merely this: Because prior to the constitutional amendment of 1906 the provisions of 839 with respect to the taxation of savings banks were discriminatory and unconstitutional, therefore, after the amendment of 1906 the legislature may, because of such discriminatory and unconstitutional law with respect to savings banks, put the latter in a class by themselves and impose not only a different *method* of taxation but a *different* rate, in fact, double taxation, and that such action by the legislature is not in violation of the equal protection clause of the federal constitution.

The Supreme Court of Minnesota said:

> "There is a reason for the classification, and there is present that substantial distinction demanded by the law between the objects placed in the class and those excluded."

Now, bearing in mind that section 839 has been for many years on the statute books of Minnesota and was passed many years before the constitutional amendment of 1906, how can it be said that there was any substantial distinction between the taxation of savings banks and other corporations or persons unless it be assumed that under the old constitutional requirements section 839 was unconstitutional?

State v. Pioneer Savings & Loan Co., supra.

That there was a slight distinction in the manner and method of determining the amount of property of a savings bank subject to taxation (due entirely to the nature of savings banks) we may concede, but we insist that there never has been any substantial distinction between the methods of taxing savings banks and of other institutions. Any such attempted distinctions in either the methods or the rate of taxation resulting in substantial advantage to savings banks as against other institutions would have been clearly in

violation of the old constitutional requirements.

State v. Pioneer Savings & Loan Company, supra.

State v. Duluth Gas and Water Company, supra.

We think the Supreme Court of Minnesota was clearly in error with respect to this point of classification. This particular point was not raised by counsel for the state nor discussed in the briefs of either side or upon the oral argument in the lower court. It was injected into the case upon the court's own motion, as we think, upon a clear misapprehension of the law.

As will be noticed by an examination of the decision of the Supreme Court of Minnesota upon this particular point, it seems to be conceded that if there is not a sound reason for the attempted classification, then this attempt of the legislature to discriminate against savings banks is in violation of the equality clause of the 14th amendment to the constitution of the United States.

We are aware that considerable latitude is allowed the states with respect to the classification of subjects for taxation, and also in the manner and methods of assessing and collecting taxes, and that this court has been reluctant to hold state laws respecting taxation

unconstitutional except where there is manifested a substantial discrimination against certain property or certain classes of tax payers.

The equality clause of the 14th amendment was not intended to restrain the legislature from making proper and legitimate classifications wherever the same may be reasonably necessary both as respects persons and property taxed and the methods of assessment and collection. At the same time it has been uniformly held that while perfect or exact uniformity and equality of taxation cannot be secured, yet substantial uniformity and equality is required.

We assume that a state law which should undertake to impose a specific tax of fifty cents for each one hundred dollars of the debt or obligation secured by a real estate mortgage when owned or held by an individual and a similar tax of three or five dollars for each one hundred dollars of the debt or obligation secured by the mortgage, when owned by a savings bank, would be such a clear discrimination against savings banks that the law would be held unconstitutional, and yet a discrimination against savings banks in the matter of taxation of real estate mortgages is quite as apparent in the present case as in the case supposed.

As before stated, real estate mortgages are a favorite investment of savings banks generally. They are designated as authorized investments for Minnesota savings banks. Under the decision of the Supreme Court of Minnesota, investments by savings banks in real estate mortgages are practically prohibited. Such savings banks must pay the registration tax precisely as all other persons or corporations and in addition thereto, must pay the regular annual tax under the general provisions relating to taxation, while other investors are exempt from the latter.

It is a matter of common knowledge that the rate of interest on real estate mortgages in the state of Minnesota is now from five to six per cent, the latter being the maximum rate on improved property and it is only on improved real estate that savings banks are allowed to loan money.

Section 3022, revised laws of Minnesota, 1905.

Savings banks in Minnesota pay from three and one-half to four per cent per annum to their depositors, payable generally in quarterly installments.

In 1908, it appears that the rate of taxation in the fifth ward of the city of Minneapolis, where the plaintiff in error was situated, was the sum of twenty-seven and three-quarters mills on the dollar (see page 5, transcript of

record). Any individual or any corporation which is not excepted from the provisions of section 3 of said chapter 328 of the laws of 1907, has merely to pay the registration tax at the time when the mortgage is offered for record, and thereafter such mortgage and the debt or obligation secured thereby is wholly exempt from any and all other forms of taxation. *It must be obvious at a glance that if savings banks must pay the registration tax and also the general tax, which in the city of Minneapolis now amounts to about three cents on the dollar, savings banks can no longer invest their deposits in real estate mortgages.*

The discrimination against savings banks is not only clear in terms, but is so substantial in the amount of the discrimination and the inevitable effect thereof that comment thereon seems unnecessary. The inevitable effect of the provisions of section 3 of chapter 328, of the laws of 1907, is to prohibit the further investment by savings banks in Minnesota real estate mortgages. We submit that the discrimination, thus clearly manifested by the law, is in violation of the equality clause of the 14th amendment.

C. B. LEONARD,
WM. A. LANCASTER AND
MILTON D. PURDY,
Attorneys for Plaintiff in Error.

Minneapolis, March 31, 1913.

Appendix.

EXHIBIT A.

Revised Laws of Minnesota, 1905.

Section 838.

Corporations, Companies, and Associations Generally—The president, secretary, or principal accounting officer of every company and association, incorporated or unincorporated, except railroad, insurance, telegraph, telephone, express, freight line, and sleeping car companies, and banking corporations whose taxation is specifically provided for in this chapter, when listing personal property, shall also make out and deliver to the assessor a sworn statement of the amount of its capital stock, setting forth particularly:

1. The name and location of the company or association.

2. The amount of capital stock authorized, and the number of shares into which it is divided.

3. The amount of capital stock paid up.

4. The market value, or, if they have no market value, then the actual value, of the shares of stock.

5. The value of its real property, if any.

6. The value of its personal property.

7. The total amount of all indebtedness, except the indebtedness for current expenses,

excluding from such expenses the amount paid for the purchase or improvement of property.

The aggregate amount of the fifth and sixth items shall be deducted from the total amount of the fourth item, and the remainder, if any, shall be listed as "bonds or stocks," under section 835, subd. 23. The real and personal property of each company or association shall be listed and assessed the same as that of private persons. If the proper officer shall fail or refuse to make such statement, the assessor shall make such statement from the best information he can obtain. Mortgages of building associations, which are represented in their stock and assessed as stock, shall not be assessed as mortgages. They shall list their real estate and all personal property as provided in this section.

EXHIBIT B.

Chapter 328, General Laws of Minnesota for 1907.

Mortgage Defined—Section 1. The words "real property," "real estate" and "land," as used in this act, in addition to the definitions thereof contained in the revised laws, 1905, shall include all property a conveyance whereof may be recorded or registered by a register of deeds under existing laws, and the words "mortgage," as so used, shall mean any in-

strument creating or evidencing a lien of any kind on such property, given or taken as security for a debt, notwithstanding such debt may also be secured in part by a lien upon personalty. An executory contract for the sale of land, under which the vendee is entitled to or does take possession thereof, shall be deemed, for the purposes of this act, a mortgage of said land for the unpaid balance of the purchase price. No instrument relating to real estate shall be valid as security for any debt, unless the fact that it is so intended and the amount of such debt are expressed therein. But a mortgage given to correct a misdescription of the mortgaged property, or to include additional security for the same indebtedness, shall not be subject to the tax imposed by this act; nor shall a mortgage securing the same and other indebtedness, additional to that upon which such tax has been paid, be taxable hereunder, except for such added sum.

Registry Tax 50 Cents for $100.—Sec. 2. A tax of fifty cents is hereby imposed upon each hundred dollars, or major fraction thereof, of the principal debt or obligation which is, or in any contingency may be, secured by any mortgage of real property situate within the state which mortgage is recorded or registered on or after April 30, 1907; provided, that if any such mortgage shall describe any real estate situate outside of this state, such tax shall be

imposed upon such proportion of the whole debt secured thereby as the value of the real estate therein described situate in this state bears to the value of the whole of the real estate described therein, as such value shall be determined by the state auditor upon application of the mortgagee.

In Lieu of All Other Taxes.—Sec. 3. All mortgages upon which such tax has been paid, with the debts or obligations secured thereby and the papers evidencing the same, shall be exempt from all other taxes; but nothing herein shall exempt such property from the operation of the laws relating to the taxation of gifts and inheritances, or those governing the taxation of banks, savings banks, or trust companies; provided, that this act shall not apply to mortgages taken in good faith by persons or corporations whose personal property is expressly exempted from taxation by law, or is taxed upon the basis of gross earnings, or other methods of commutation in lieu of all other taxes.

EXHIBIT C.

Revised Laws of Minnesota, 1905.

Section 839.

Private Bankers, Brokers, and Banks without Stock—The accounting officer of every bank whose capital is not represented by

shares of stock, and every private banker, broker, and stockjobber, *when listing personal property,* shall also make out and deliver to the assessor a sworn statement showing:

1. The amount of money on hand or in transit.

2. The amount of funds in the hands of other banks, brokers, or others subject to draft.

3. The amount of checks or cash items not included in either of the preceding items.

4. The amount of bills receivable, discounted or purchased, and other credits due or to become due, including accounts receivable, and interest accrued but not due, and interest due and unpaid.

5. The amount of bonds and stock of every kind (except United States bonds), and shares of capital stock of joint stock or other companies or corporations held as an investment, or in any way representing assets.

6. All other property appertaining to said business, other than real estate, which shall be listed and assessed as other real estate under this chapter.

7. The amount of all deposits made with them by other persons.

8. The amount of all accounts payable, other than current deposit accounts.

The aggregate amount of the seventh and eighth items shall be deducted from the ag-

gregate amount of the first, second, third and fourth items, and the remainder, if any, shall be listed as money, under section 835, subd. 19. The amount of the fifth item shall be listed as bonds and stock under said section, and the sixth item shall be listed the same as other similar personal property is listed under this chapter, except that, in case of savings banks organized under the general laws of this state, the amount of the seventh and eighth items shall be deducted from the aggregate amount of the first, second, third, fourth, fifth, and sixth items, and the remainder, if any, shall be listed as credits, according to the provisions of section 835.

Section 840.

Incorporated Banks—The stockholders of every bank or mortgage loan company in this state, organized under the laws of this state or of the United States, shall be assessed and taxed on the value of their shares of stock therein, in the county, town, district, city, or village where such bank or mortgage loan company is located, whether such stockholders reside in such place or not, and shall be assessed in the name of the bank or mortgage loan company. The cashier or other officer of the bank or mortgage loan company shall list all shares of stock of the bank or mortgage company for assessment, in the same manner

as the general property of the bank is listed. To aid the assessor in determining the value of such shares of stock, the accounting officer of every such bank shall furnish a sworn statement to the assessor, showing the amount and number of the shares of capital stock, the amount of its surplus or reserve fund, and the amount of its legally authorized investments in real estate, which shall be assessed and taxed as other real estate under this chapter. The assessor shall deduct the amount of investments in real estate from the aggregate amount of such capital and surplus fund, and the remainder shall be taken as a basis for the valuation of such shares in the hands of the stockholders, subject to the provisions of law requiring all property to be assessed at its true and full value. The shares of capital stock of national banks not located in this state, held in this state, shall not be required to be listed under this chapter.

EXHIBIT D.

Article IX, Constitution of Minnesota. Finances of the State, and Banks and Banking.

Taxes to be Equal—Special Assessments—Inheritance Tax—*All taxes to be raised in this state shall be as nearly equal as may be, and all property on which taxes are to be lev-*

ied shall have a cash valuation and be equalized and uniform throughout the state: Provided, that the legislature may, by general law or special act, authorize municipal corporations to levy assessments, for local improvements upon the property fronting upon such improvements, or upon the property to be benefited by such improvements, or both, without regard to a cash valuation, and in such manner as the legislature may prescribe; and provided further, that for the purpose of defraying the expenses of laying water pipes and supplying any city or municipality with water, the legislature may, by general or special law, authorize any such city or municipality, having a population of five thousand or more, to levy an annual tax or assessment upon the lineal foot of all lands fronting on any water main or water pipe laid by such city or municipality within corporate limits of said city for supplying water to the citizens thereof without regard to the cash value of such property, and to empower such city to collect any such tax, assessments or fines, or penalties for failure to pay the same, or any fine or penalty for any violation of the rules of such city or municipality in regard to the use of water, or for any water rate due for the same; and provided further, that there may be by law levied and collected a tax upon all inheritances, devises, bequests, legacies and gifts of every

kind and description above a fixed and specified sum, of any and all natural persons and corporations. Such tax above such exempted sum may be uniform, or it may be graded or progressive, but shall not exceed a maximum tax of five per cent.

Property Subject to Taxation—Laws shall be passed taxing all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, and also all real and personal property, according to its true value in money; but public burying grounds, public schoolhouses, public hospitals, academies, colleges, universities, and all seminaries of learning, all churches, church property used for religious purposes, and houses of worship, institutions of purely public charity, public property used exclusively for any public purpose, and personal property to an amount not exceeding in value two hundred dollars for each individual, shall, by general laws, be exempt from taxation.

Taxation of Property Employed in Bank ing—Laws shall be passed for taxing the notes and bills discounted or purchased, moneys loaned, and all other property, effects, or dues of every description, of all banks and of all bankers, *so that all property employed in banking shall always be subject to a taxation equal to that imposed on the property of individuals.*

EXHIBIT E.

Article IX, Constitution of Minnesota.
Amendment promulgated December 27, 1906.

Power of Taxation—Legislature May Authorize.—The power of taxation shall never be surrendered, suspended or contracted away. *Taxes shall be uniform upon the same class of subjects,* and shall be levied and collected for public purposes, but public burying grounds, public school houses, public hospitals, academies, colleges, universities, and all seminaries of learning, all churches, church property, and houses of worship, institutions of purely public charity, and public property used exclusively for any public purpose, shall be exempt from taxation, and there may be exempted from taxation personal property not exceeding in value $200, for each household, individual or head of a family, as the legislature may determine; provided, that the legislature may authorize municipal corporations to levy and collect assessments for local improvements upon property benefited thereby without regard to a cash valuation, and provided further, that nothing herein contained shall be construed to affect, modify or repeal any existing law providing for the taxation of the gross earnings of railroads.

12

Supreme Court of the United States.

OCTOBER TERM, 1912.

No. 39

THE FARMERS AND MECHANICS SAVINGS BANK OF MINNEAPOLIS, *Plaintiff in Error,*

vs.

THE STATE OF MINNESOTA, *Defendant in Error.*

Brief for Defendant in Error.

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AUTHORITIES CITED.

Supreme Court of the United States.

OCTOBER TERM, 1912.

No. 323.

THE FARMERS AND MECHANICS SAVINGS BANK OF MINNEAPOLIS, *Plaintiff in Error,*

vs.

THE STATE OF MINNESOTA, *Defendant in Error.*

Brief for Defendant in Error.

STATEMENT OF FACTS.

The Farmers & Mechanics Savings Bank, plaintiff in error, is a mutual savings bank, organized and existing as a corporation under the laws of the state of Minnesota, with its headquarters at the city of Minneapolis. It has no capital stock and no stockholders, and is presumed to be operated for the benefit of its depositors.

As of May 1st, 1908, pursuant to the provisions of section 839, Revised Laws of Minnesota for 1905, an assessment was levied on its property. This assessment was arbitrarily levied by the city assessor of the city of Minneapolis in the sum of $150,000, which was subsequently increased by the state board of equalization to the sum of $151,250.

The bank had before this arbitrary assessment was made, filed a return showing no surplus on which a tax could be levied, but under the stipulations subsequently made between the bank and the representatives of the state it was shown that the bank, in addition to the property returned, also owned on May 1st, 1908, bonds issued by municipalities situated in Indian Territory of the value of...$278,000

Bonds issued by municipalities situated in the Territory of Oklahoma of the value of..... 423,100

And in addition to this mortgages on Minnesota reality amounting to... 161,650

Or a total of assets amounting to....$862,750

Above what was shown in its original return, making a surplus of.....$285,765.75

In the trial court, as of April 6, 1910, in proceeding to enforce the payment of delinquent taxes for the year 1908, the state secured findings of the court and an order for judgment against the bank for the sum of $4,197.19, to-

gether with a penalty of 10 per cent and for the costs and disbursements of the action. Thereafter a motion was made for a new trial upon the ground "That the decision is not justified by the evidence and is contrary to law," which motion was denied and from the order denying a new trial an appeal was taken to the Supreme Court of the state of Minnesota, and in that court the order was affirmed, with a slight modification, which was conceded to be correct by the respondent in that court and as modified a final judgment was entered, and from this final judgment a writ of error was issued to the Supreme Court of the state of Minnesota.

BRIEF OF ARGUMENT.

There seems to be but two questions urged by plaintiff in error before this Honorable Court, as follows:

1ST: ARE BONDS OF MUNICIPAL CORPORATIONS OF INDIAN TERRITORY AND OF THE TERRITORY OF OKLAHOMA EXEMPT FROM TAXATION IN THE HANDS OF A RESIDENT OF THE STATE OF MINNESOTA, AND

2ND: DOES CHAPTER 328, LAWS OF MINNESOTA FOR 1907, IN EXCEPTING SAVINGS BANKS FROM THE EXEMPTION FROM ALL OTHER TAXES ALLOWED GENERALLY TO OTHER HOLDERS OF REAL

ESTATE MORTGAGES, UNLAWFULLY DISCRIMINATE AGAINST SUCH SAVINGS BANK AND DOES IT VIOLATE THE EQALITY CLAUSE OF SEC. 1, ART. 14, OF THE AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES?

I.

We shall divide the argument under the first statement into two parts:

(a) *Were the bonds in question bonds of a territorial municipality on the 1st day of May, 1908?*

An enabling act was passed by Congress (34 Stat. L. 278) under which it was provided:

> "That the inhabitants of all that part of the area of the United States now constituting the territory of Oklahoma and the Indian Territory as at present described may adopt a constitution and become the state of Oklahoma, as hereinafter provided. * * * "

Under this enabling act a constitution was adopted by a convention of citizens of what had formerly been Indian Territory and the Territory of Oklahoma (excepting certain Indian lands) on the 22nd day of April, 1907, and the president of the United States duly approved said constitution and under and by virtue of his said office and of said enabling act issued his proclamation admitting the said

state of Oklahoma as one of the sovereign states of the American Union. This proclamation was dated on the 16th day of November, 1907.

Section 4, of article I, of the Oklahoma Constitution reads as follows:

> "The debts and liabilities of the Territory of Oklahoma are hereby assumed and shall be paid by the state."

The assessment against plaintiff in error was made pursuant to the provisions of section 802, Revised Laws of Minnesota for 1905, which reads as follows:

> " * * * Personal property shall be listed and assessed annually with reference to its value on May 1, and, if acquired on that day, shall be listed by or for the person acquiring it."

At the time of the making of the assessment Indian Territory and the Territory of Oklahoma had ceased to exist for nearly six months and if the bonds of the municipalities of these territories were ever the obligations of the territorial government they were by the constitution assumed by the state of Oklahoma.

It has been held by this Honorable Court in *Kansas Pac. R. R. Co. v. Atchison, Topeka & Santa Fe R. R. Co.*, 112 U. S. 414:

> "The admission of Kansas as a state into the union and the consequent change of its form of government in no respect affect the essential character of the cor-

> porations or their powers or rights. *They must after that change be considered corporations of the state as much so as if they had derived their existence from its legislation.* As its corporations they are to be treated so far as may be necessary to enforce contracts or rights of property by or against them, as citizens within the clause of the constitution declaring the extent of the judicial power of the United States. It has been expressly held that they are to be so considered when they have controversies with citizens of other states. * * * "

If the court does not agree with us that on May 1st, 1908, the bonds of municipal corporations of Indian Territory and the Territory of Oklahoma were obligations of a public corporation of the state of Oklahoma, then we must proceed further.

(b) *Is a territorial government responsible for the bonds issued by a municipal corporation thereof? And is the United States Government responsible for the liabilities incurred by a territorial government? Or, is a municipal corporation of a territory of the United States such an agency of the federal government that its bonds are "bonds or obligations of the United States?"*

It is conceded that if the bonds of municipalities of Indian Territory and the Territory of Oklahoma are "bonds or obligations of the

United States" that the state of Minnesota has no right to impose a tax on the holder thereof.

Defendant in error contends that the bonds of municipal corporations located within an organized territory of the United States, such as Oklahoma or Indian Territory are not in any manner the obligations of the United States, nor is a public municipal corporation of a territory discharging any function of the United States that is different in any degree from the function discharged by a municipal corporation in any sovereign state.

The only case that even remotely touches this subject seems to be *Grether v. Wright, et al.*, 75 Fed. Rep. 742, and this involved bonds, the payment of which was guaranteed by the United States government, and for which that government was responsible and is not of any assistance in the case at bar.

For what purpose may a municipal corporation of a territory issue bonds and the answer must necessarily be, as authorized by its charter or the legislative assembly of the territory in which it is located and probably in the same manner and for the same purposes as a municipality located within a state.

The organic act of every United States territory we have examined has specifically provided (1) that no tax shall be imposed upon

the property of the United States and (2) that all laws passed by the legislative assembly and governor shall be submitted to Congress and *if disapproved* shall be null and of no effect.

The charter of a territorial municipality ordinarily contains regulations specifying the means whereby indebtedness may be created.

The charter of such municipality is granted by act of the territorial legislature which act becomes law unless "disapproved by Congress" and the only other way in which such municipal corporation may incur bonded indebtedness is by either general or special legislation of the territorial legislative assembly, which becomes the law of the territory under the same conditions as stated above in relation to a municipal charter.

Is any sovereign state liable for the indebtedness incurred by one of its municipal corporations? The answer seems obvious.

Does the United States government by failure to disapprove such territorial legislation thereby become liable for the payment of bonds issued by a municipality located in such territory?

It was held in *State Tax on Foreign Held Bonds*, 15 Wall. (U. S.) 300, that:

> "Except so far as restrained by the provisions of the Federal Constitution the power of the state as to the mode, form

and extent of taxation is unlimited where the subject to which it applies is within the jurisdiction of the state.

But, conceding for the sake of the argument, that municipalities of territories are agencies of the national government, their exemption from taxation applies only in so far as their property is actually engaged in furthering the interest of and actually serving the national government. When the municipality of a territory issues bonds for local improvements in what way is it serving the federal government? And by reason of such service why should it be entitled to have its obligations exempt from taxation? The following authorities seem to hold that it is not entitled to any such exemption:

"The taxation by a territory of the franchise of a corporation incorporated by an act of Congress is not unconstitutional as the taxation of a federal agency in the absence of such restriction in the grant of the taxing power to the territory as Congress may permit the territory to do so."

Atlantic & Pac. R. R. Co. v. LeSeur, 2 Ariz. 428 (1 L. R. A. 244).

"Government agencies are exempt from state taxation only so far as it interferes with their efficiency in performing the function by which they serve the government."

Wes. Un. Tel. Co. v. Atty. General, 125 U. S. 530.

Id. v. Pac. R. R. Co., 120 Fed. 984.
State v. Wes. Un. Tel. Co., 165 Mo. 521.
Elmira Savings Bank v. Davis, 125 N. Y. 595.

"A state tax on the property of an agent of the general government is not prohibited merely because it is the property of such agent. To prevent such a tax, its effect must be to deprive such agent of the power to serve the government as he was intended to serve and it must in fact hinder and delay the sufficient exercise of the agent's power. A tax upon an agent's property has no such necessary effect."
Moore v. Treas., 7 Wyoming, 292.

And in the case of *Wes. Un. Tel. Co. v. Texas*, 105 U. S. 460, it was held that the company,

"Having accepted the restrictions and obligation of the provision of Congress occupies in Texas the position of an instrument of foreign and interstate commerce and of a government agent for the transmission of messages on public business. Its property in the state is subject to taxation the same as other property and it may undoubtedly be taxed in a proper way on account of its occupation and its business."

In *Wes. Un. Tel. Co. v. Mass.*, 125 U. S. 530, this Honorable Court, in speaking of the principle that telegraph companies incorporated by acts of Congress are agents of the general government and hence not subject to taxation, says:

"If the principle now contended for be sound every railroad in the country should be exempt from taxation, because they all have been declared to be post roads; and the same reasoning would apply with equal force to every bridge and navigable stream throughout the land. * * * It was to provide against the recognition of such a principle that this court in the case above cited, while holding that telegrams themselves coming from without the state or sent out of it as part of their conveyance could not be taxed by the state specifically, nevertheless used the language that 'its property in the state is subject to taxation the same as other property and it may undoubtedly be taxed in a proper way on account of its occupation and business.'"

In *Dyer v. Melrose*, 215 U. S. 594, this court affirmed a judgment of the Supreme Court of Massachusetts sustaining a tax on the property of an officer of the United States navy. The officer's salary had been paid to him and deposited in a national bank subject to check.

In *National Bank v. Ky.*, 76 U. S. 361, this court said:

"* * * It is only when the state law incapacitates the banks from discharging their *duties to the* government that it becomes unconstitutional."

In the case of *R. R. Co. v. Peniston*, 85 U. S. 5, the court reviews *McCullough v. Maryland; Lane Co. v. Oregon*, 7 Wall. 77; *Thompson v.*

No. Pac. Ry. Co., 9 Wallace, 579; *Weston v. City of Charleston*, 2 Pet. 467; *Osborne v. Bank of U. S.*, 9 Wheaton, 738; *Nat'l. Bank v. Commonwealth of Ky.*, 9 Wall. 353, and then says:

> "It is therefore manifest that exemption of federal agencies from state taxation is dependent, not upon the nature of the agents, or upon the mode of their constitution, or upon the fact that they are agents, but upon the effect of the tax; that is, upon the question whether the tax does in truth deprive them of power to serve the government as they were intended to serve it, or does hinder the efficient exercise of their power. A tax upon their property has no such necessary effect. It leaves them free to discharge the duties they have undertaken to perform. A tax upon their operations is a direct obstruction to the exercise of federal powers.
>
> "In this case the tax is laid upon the property of the railroad company. * * * It is not imposed upon the franchise or the right of the company to exist and perform the function for which it was brought into being. Nor is it laid upon any act which the company has been authorized to do. It is not the transmission of dispatches nor the transportation of the U. S. mails, or troops, or munitions of war that is taxed; but it is exclusively the real and personal property of the agent taxed in common with all other property in the state of a similar character. It is impossible to maintain that this is an interference with the exercise of any power belonging to the general government, and

if it is not, it is prohibited by no constitutional implication."

This was approved in

Van Brocklyn v. Ky., 117 U. S. 151.

Cent. Pac. R. R. Co. v. Cal., 162 U. S. 119.

Hibernia Sav. Soc. v. San Francisco, 200 U. S. 314.

In the case of *Thompson v. Pac. R. R.*, 76 U. S., at page 591, the court says:

"No one questions that the power to tax all property, business, and persons within their perspective limits, is original in the states and has never been surrendered. It cannot be so used, indeed, as to defeat or hinder the operations of a national government; but it will be safe to conclude, in general, in reference to persons and state corporations employed in government service, that when Congress has not interposed to protect their property from state taxation, such taxation is not obnoxious to that objection."

This language is quoted and approved in *Cent. Pac. R. R. v. Cal.*, 162 U. S. 121, and is as follows:

"The doctrine of exemption ought not to be carried any further than is necessary.

"Great injustice is done to others by exempting men who are living upon the interest of their money invested in United States stocks from the payment of taxes, thereby establishing a privileged class of public creditors, who though living under the protection of the government are ex-

empted from bearing any of its burdens. A construction of the constitution drawing after it such consequences ought to be very palpable before it is adopted."

Weston v. City of Charleston, 2 Pet. 477.

"Exemptions must be in terms so specific and certain as to admit of no doubt. They will not be gratituitously construed into legislative enactments."

St. Paul M. & M. Ry. Co. v. Todd Co., 142 U. S. 282.

Phoenix Fire & Marine Ins. Co. v. Tennessee, 161 U. S. 174.

State v. Wes. Un. Tel. Co., 96 Minn. 22.

Delaware R. R. Tax Case, 85 U. S., p. 225.

It cannot be claimed that the bonds of municipal corporation of United States territories are exempt from taxation under any statutory law of the United States. They do not come under the provisions of Sec. 3701, U. S. Compiled Statutes, 1901.

II.

DOES CHAPTER 328, LAWS OF MINNESOTA FOR 1907 IN EXCEPTING SAVINGS BANKS FROM THE EXEMPTION OF ALL OTHER TAXES ALLOWED GENERALLY TO OTHER HOLDERS OF REAL ESTATE MORTGAGES, PAYING THE REGISTRY FEE, UNLAWFULLY DISCRIMINATE AGAINST SUCH SAVINGS BANKS AND DOES IT VIOLATE THE EQUALITY CLAUSE OF SECTION 1, ARTICLE 14, OF THE AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES?

Counsel for plaintiff in error has set forth sections 1, 2 and 3 of chapter 328, Laws of Minnesota, 1907. We believe that sections 7 and 8 of that act are quite important to a consideration of the validity of the law. Section 7 reads as follows:

> "No such mortgage, no papers relating to its foreclosure nor any assignment or satisfaction thereof shall be recorded or registered after April 30, 1907, unless said tax shall have been paid; nor shall any such document, or any record thereof, be received in evidence in any court, or have any validity as notice or otherwise."

Section 8 provides a manner whereby the holder of any mortgage recorded prior to the enactment of the law may upon payment of the tax specified in the law be registered pursuant thereto.

The Minnesota decisions upon this law are as follows:

In *Mutual Benefit Ins. Co. v. Martin Co.*, 104 Minn. 179:

> "Chapter 328, Laws of Minn. for 1907, is a tax upon the security and not upon the debt secured and as such tax it is not double taxation and does not contravene the 14th Amendment of the Constitution of the United States."

In *State v. Fitzgerald*, 117 Minn. 192:

> "As we held in the *Martin case* the tax is not on the indebtedness but upon the security. While the language of the section is that a tax of 50c is hereby imposed on each $100 of the indebtedness, it is still true that the tax is not imposed on the indebtedness at all, but is imposed on the security or lien given by the mortgage. The amount of the debt is used to determine the value for taxation of the security or lien and this is clearly proper."

The New York mortgage tax law is very similar to that of Minnesota; and undoubtedly the Minnesota law was largely taken from the New York statute.

Section 251, Consolidated Laws of N. Y., 1909, provides as follows:

> "All mortgages of real property situated within the state which are taxed by this article and the debts and obligations which they secure, together with the paper writings evidencing the same, shall be exempt from other taxation by the state, counties, cities, towns, villages, school districts and other local subdivisions of the state except that such mortgage shall not

be exempt from the taxes imposed by sections 24, 187, 189, and article 10 of this chapter."

Section 24 provides for a tax for the shares of stock of banks or banking associations organized under laws of New York or United States, and provides:

"The said tax shall be in lieu of all other taxes whatsoever for state, county or local purposes upon said shares of stock and mortgages * * * held or owned by banks or banking associations the value of which enters into the value of said shares of stock shall also be exempt from all other state, county or local taxation."

Section 189 provides that:

"Every savings bank incorporated, organized or formed by or pursuant to the law of this state shall pay to the state annually for the privilege of exercising its corporate franchise or carrying on its business in such corporate or organized capacity an annual tax which shall be equal to ten per centum on the par value of its surplus and undivided earnings."

In *People v. Ronner,* 185 N. Y. 285, the court said, on page 291:

" * * * In the raising of revenue for the needs of the government the power may be exercised upon every occupation every object of industry or enjoyment and every species of possession. The purpose of a system of taxation, the apportionment of tax and the property to be affected are matters within the legislative dis-

cretion (citing 4 Wheaton 316; 4 Pet. 514; 134 U. S. 232; 99 N. Y. 296; 177 N. Y. 23). * * * The legislative department is to determine what shall be the public burden and it is not for the judicial department to inquire what degree of taxation is the legitimate use, and what degree may amount to the abuse of the power. * * * We cannot substitute our own judgment for that of the legislature in matters of legislation. * * * "

And on page 293 in this same case, the court said:

"Due process of law and the equal protection of the laws are secured, if the law operates alike upon all who are similarly situated and if it does not subject the person to an arbitrary exercise of the powers of government (See 95 U. S. 37; 152 U. S. 377)."

The law was sustained in New York.

In *Metropolitan St. Ry. Co. v. N. Y.*, 199 U. S. 1, on page 47, the court said:

" * * * It may be said that there is a difference between surface and sub-surface street railroads sufficient to justify a diversity in the mode and extent of taxation. In *Savannah, etc., Ry. Co. v. Savannah*, 198 U. S. 392, just decided, taxation of the street R. R. was challenged on the ground that a steam railroad ran into the city and along its streets and there did some of the same kind of work as the ordinary street railroad, was not subject to the same tax and referring to this declation is this declaration of Mr. Justice Holmes, 'the difference between the two

railroads is obvious and warrants the diversity in the mode of taxation.' * * * "

In *Bell's Gap R. R. Co. v. Pa.*, 134 U. S. 232, on page 237, the court said:

" * * * The provision in the Fourteenth Amendment, that no state shall deny to any person within its jurisdiction the equal protection of the laws, was not intended to prevent a state from adjusting its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebtedness or not allow them. All such regulations and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the state legislature, or the people of the state in framing their constitution. But clear and hostile discriminations against particular persons and classes, especially such as are of an unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition. It would, however, be impracticable and unwise to attempt to lay down any general rule or definition on the subject, that would include all cases. They must be decided as they arise. We think that we are safe in

saying, that the Fourteenth Amendment was not intended to compel the state to adopt an iron rule of equal taxation. If that were its proper construction, it would not only supersede all those constitutional provisions and laws of some of the states, whose object is to secure equality of taxation, and which are usually accompanied with qualifications deemed material; but it would render nugatory those discriminations which the best interests of society require; which are necessary for the encouragement of needed and useful industries, and the discouragement of intemperance and vice; and which every state, in one form or another, deems it expedient to adopt."

The last cited case was approved in *Southwestern Oil Co. v. Texas,* 217 U. S. 122, which also cited *Home Ins. Co. v. N. Y.,* 134 U. S. 594; *Connelly v. Union Sewer Pipe Co.,* 184 U. S. 540, and numerous other decisions and sustained the Texas enactment providing for the levy and collection of a tax upon individuals, firms, associations or other persons owning, managing, operating, or controlling for profit within the state certain specific kinds of business and says on page 121:

" * * * In its discretion it may tax all or it may tax one or some, taking care to accord to all in the same class equality of rights. The statute in respect of the particular class of wholesale dealers mentioned in it is to be referred to the governmental power of the state, in its discretion, to classify occupations for pur-

> poses of taxation. The state, keeping within the limits of its own fundamental law, can adopt any system of taxation or any classification that is deemed best by it for the common good and the maintenance of its government, provided such classification be not in violation of the Fourteenth Amendment."

In *Flint v. Stone Tracy Co.*, 220 U. S. 108, on page 160, is found a note with a list of U. S. cases sustaining a classification made in a large number of the states.

The Minnesota Supreme Court, in its opinion in this case, has given the status of savings banks far more ably than we feel we could, and we refer to the printed transcript of record commecing on page 23 and ending on page 26.

There is no attempt to discriminate as between savings banks as was the case in *Codding v. Kansas Stock Yard Co.*, 183 U. S. 79, where an attempt was made to discriminate according to the business done.

In *Mercantile Nat'l. Bank v. Mayor, etc., N. Y.*, 172 N. Y. 35, the court says:

> "There is no constitutional guaranty that taxation shall be just and equal, though underlying this great governmental power, and implied from the nature of our political institutions, is the principle that it shall not be arbitrary and that there shall be no discrimination against persons, by laying greater burdens on one

than are laid on others *in the same calling or conditions.*"

See also,

Gennett v. City of Brooklyn, 99 N. Y. 296.

Bells Gap R. R. Co. v. Pa., 134 U. S. 232.

"Merely because the mode of assessment is so crude that it results in shifting on the same person by reason of his ownership of particular property several burdens of taxation when fairness would suggest only one is no ground for holding the mode of assessment unconstitutional."

Gray Lim. on taxing power, Sec. 1630, *et seq.*

1 *Cooley on Taxation,* 3rd ed., sections 389 to 397.

The judgment appealed from should be affirmed.

Respectfully submitted,

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Minneapolis, Minnesota.

Dated April 21, 1913.

Supreme Court of the United States.

OCTOBER TERM, 1912.

NUMBER 323.

THE FARMERS AND MECHANICS SAVINGS BANK OF MINNEAPOLIS, *Plaintiff in Error,*

vs.

THE STATE OF MINNESOTA, *Defendant in Error.*

Reply Brief.

I.

Counsel for defendant in error have now raised for the first time the point that at the time when the tax complained of was assessed against the bonds of the municipalities of Oklahoma and Indian Territories, such territories had become merged in the state of Oklahoma. They say that because by section 4, of article 1, of the constitution of the state of Oklahoma the debts and liabilities of the territory of Oklahoma are assumed and shall

be paid by the state, the bonds of the municipalities of both territories, if they ever were in fact the obligations of the respective territorial governments, have now become the obligations of the state of Oklahoma and consequently stand on the same footing as the bonds issued by a state or by its municipalities.

In the first place, we have never contended, nor do counsel for the defendant in error assert, that the bonds of the municipalities of the two territories were ever, in fact, the express obligations of the respective territories or of the United States. In other words, the credit of neither the United States nor of the territories was pledged for the payment of these bonds. They were issued, as counsel claim, pursuant to legislative authority and upon the credit of the municipalities in precisely the same way that bonds of the municipalities of the states are generally, if not always, issued.

The state of Oklahoma, therefore, by the adoption of its constitution, does not in terms nor by implication assume and agree to pay the bonds of the municipalities of the respective territories. Those bonds remain precisely as they did when they were issued and are now, as they always have been, the obligations of the municipalities.

We know of nothing in the constitution of the state of Oklahoma nor in the acts of Con-

gress that has attempted in the slightest degree to change their character or to restrict or enlarge their obligations. Counsel for defendant in error have made this point in rather a perfunctory way, and there is nothing whatever in the case cited by them with reference thereto, to-wit, *Kansas Pacific Railroad Company v. Atchison, Topeka & Santa Fe Railroad Company,* 112 U. S., 414, which has, as we think, the slightest bearing upon the point.

If, as we contend, these bonds when they were issued and negotiated were the obligations of a political agency or dependency of the United States, then we submit that they are no different now from what they were when they were so issued and negotiated and cannot be taxed by state authority. The point which counsel have attempted to make, that because the state of Oklahoma has assumed and agreed to pay these bonds they are now the bonds of the state precisely the same as though they had been originally issued by the state or by its authority, must fail for the obvious reason that, even if such assumption could change the character of the bonds, there is, in fact, no such assumption.

But suppose, for the sake of the argument, these bonds of the municipalities of the respective territories had been issued under express authority from the Federal Government and had been declared to be tax exempt by

the states, would it be possible, after such bonds had been issued and negotiated, to change their character by admitting the territories into the Union? In other words, would it be possible to make them taxable by the states, by any proceeding to which the holders of the bonds did not themselves consent? Could an express exemption be thus taken away without impairing the obligation of the contract?

In the case at bar, if our main contention is correct, that these bonds were the obligations of a political agency or dependency of the United States and as such, necessarily exempt from taxation by the states, can that quality, which necessarily inheres in the obligation, be changed merely by the adoption of a state constitution and admission into the Union? The obligation of the contract is just as much impaired in the one case as in the other. We submit, therefore, that there is nothing in the point which counsel have thus attempted to raise.

Murray v. Charlestown, 96 U. S., 432.

If we are correct upon the main proposition that these bonds, when they were issued by the municipalities of the territories, were not taxable by the states, then that implied exemption (as fully as if it had been express) is a part of the contract and must extend through-

out the term of the contract and may not be impaired by subsequent legislation.

The Congress cannot impair its own contracts nor authorize the states to impair theirs.

Sinking Fund Cases, 99 U. S., 700.
Edwards v. Kearzey, 96 U. S., 595.

II.

In their brief counsel for the defendant in error assume that our main contention, that the bonds of municipalities of territories are not taxable by the states, depends upon the answers to the following questions:

(a) "Is a Territorial Government responsible for the bonds issued by a municipal corporation thereof?"

(b) "Is the United States Government responsible for the liabilities incurred by a Territorial Government?"

We contend that these questions are wholly immaterial. We do not claim that the credit of a Territory is pledged for the payment of the bonds issued by its municipalities or that the United States Government is responsible for the liabilities incurred by a territory.

None of the cases cited by us in our main brief or by counsel for defendant in error in their brief turns upon the answer to either of

these questions. Counsel say that a sovereign state is not liable for the indebtedness incurred by one of its municipal corporations and that the United States Government does not become liable for the payment of bonds issued by a municipality located in a territory merely by failing to disapprove of territorial legislation. And in this we concur. But in several of the cases which we have reviewed in our brief (pages 16 to 33) there was no direct liability of any kind resting upon the Federal Government and yet there was exemption from state taxation upon the ground that the thing or institution taxed was an agency or instrumentality of the United States.

Counsel for defendant in error have confined themselves almost exclusively to a consideration of those cases, where taxation by the states of corporations, such as railroad and telegraph companies, either chartered by or receiving aid from the Federal Government, has been sustained by this court. *Western Union Telegraph Company v. Attorney General,* 125 U. S., 530; *Western Union Telegraph Company v. Texas,* 105 U. S., 460; *Western Union Telegraph Company v. Massachusetts,* 125 U. S. 530; *Railroad Company v. Peniston,* 85 U. S., 5; *Central Pacific Railroad Company v. California,* 162 U. S., 119; *Thompson v. Pacific Railroad Company,* 76 U. S., 591.

In *Railroad Company v. Peniston,* 85 U. S., 5, five of the sitting judges held that taxation by the state of the property of a railroad corporation, chartered by Congress, situated within the state, was subject to state taxation, while three of the judges dissented. In that case the corporation, although chartered by Congress, was one for private gain, all of its stock being owned by individuals. Congress assisted the corporation by donations and loans and reserved the right to the Federal Government of appointing two members of its Board of Directors. The property taxed within the state of Nebraska was its road-bed, rolling stock and other property used in the operation of the road.

The case was sought to be distinguished from *Thompson v. The Union Pacific Railroad Company,* 9 Wallace, 579. In the latter case the corporation was chartered by the state of Kansas and not by Congress. This court, however, placed stress upon the fact that in neither case did the United States own the railroad. The ownership in both cases was, in fact, private, the Government having only an incidental interest in either, arising out of the donations and loans made by it to the corporations. It was held that there was nothing in the *McCulloch* or *Osborn cases* which was inconsistent with the holding in the *Peniston case.*

The court called special attention to the fact that in the *McCulloch case* the real property of the bank of the United States was subject to ordinary taxation by the state, but that no tax could be enforced by the state upon the notes of the bank as that would be a tax upon the operations of the bank. A territory is a mere dependency of the Federal Government and a municipality, a political subdivision of the territory.

The power of either the territory or its municipalities to borrow money must come directly or indirectly from the Federal Government. The actual borrowing of money by either the territory or any of its political subdivisions is an operation of an agency or dependency of the Federal Government. A tax upon the obligation issued by the territory or by any of its political subdivisions necessarily affects, restricts and impedes the power of such agencies to borrow.

Counsel for defendant in error have cited the case of *Van Brocklin v. Tennessee,* 117 U. S., page 151. This case is obviously opposed to any of their contentions. There the Federal Government, in enforcing the collection of a tax, acquired title to certain real estate in Tennessee and subsequently sold the same. A state tax, assessed at a time when the title to the lands in question was in the United States, was sought to be enforced against the lands

in the hands of subsequent purchasers. The Supreme Court of Tennessee held, that under the constitution and laws of the state of Tennessee, all property, real or personal, within the state, excepting only that specially exempted, was subject to taxation. Neither the constitution nor the laws of the state of Tennessee exempted lands acquired by the United States, except for special purposes.

The lands in question were acquired by the Federal Government, according to the opinion of the Supreme Court of Tennessee, in the ordinary way by the enforced collection of a debt, and it held such lands in precisely the same way that they would have been held by a private individual under similar circumstances and consequently were subject to state taxation. The opinion of this court in this case was unanimous and a very long and exhaustive one, reviewing practically every case bearing upon the subject of state taxation of the property, agencies and instrumentalities of the Federal Government which had been decided up to that time (March 1, 1886). It was held that the lands were not subject to taxation by the state while owned by the Federal Government. Much of the reasoning of the court in that case is peculiarly in point for our contentions here.

Counsel for defendant in error have also cited the case of *Western Union Telegraph*

Company v. Pennsylvania Railroad Company, 120 Fed., 984. We have examined this case with much care and can find nothing whatever in the opinion even remotely bearing upon the question here involved. The decision referred to by counsel was delivered by a United States District Judge. It was subsequently reversed by the Circuit Court of Appeals, Third Circuit (see 123 Fed., page 33), and the latter decision was subsequently affirmed by this court (see 195 U. S., 540).

Counsel also cite the case of *Dyer v. Melrose,* 215 U. S., 594, affirming the judgment of the Supreme Court of Massachusetts which sustained a state tax upon the money of an officer of the United States Navy deposited in bank, which was the proceeds or a part of the proceeds of a salary paid to him by the Federal Government. The Massachusetts judgment was affirmed, upon the authority, among other cases, of *Hibernia Savings Society v. San Francisco,* 200 U. S., 310. The principle involved in both cases is the same. We have already called the attention of the court to the *Hibernia Savings Society case* (page 27 of our main brief).

It was sought by Dyer to defeat the tax in question upon the authority of those cases in this court, holding that it was not competent for the state governments to tax the salaries of Federal officers or employees,—*Dobbins v.*

Commissioners of Erie County, 16 Peters, 435; *Collector v. Day,* 11 Wallace, 113. The tax, however, was sustained upon the ground that it was not a tax upon the salary or income of the officer derived from the Federal Government but was a tax upon money in bank which had lost its identity as salary and was held as money, effects or credits in bank liable to taxation under the general law.

The distinction between a state tax upon a Federal officer's income as such officer and upon money or property in his hands, arising in whole or in part from the proceeds of such salary, is obvious. If the money resulting from his salary which he might have on hand or in bank at a given assessment time was to be exempt, then, logically, any property, real or personal, which he might purchase with the proceeds of his salary would also be exempt. This case we submit is obviously not in point for any of the contentions of the defendant in error.

It will be noticed by an examination of the brief for defendant in error, that counsel has not referred to or in any manner discussed or commented upon the decisions of this court, holding that it is not competent for the Federal Government to tax bonds issued by a state or, under its authority, by its public municipal bodies,—*Mercantile Bank v. New York,* 121 U. S., 138; *Pollock v. Farmers' Loan*

& *Trust Company,* 157 U. S., 429. These cases and other cases bearing upon this point are discussed in our main brief, pages 37 to 46.

See also upon the point that it is not competent for a state to tax directly or indirectly the Federal Government, its property, agencies or instrumentalities, nor for the Federal Government to tax a state on its property or its agencies or instrumentalities,—*Fagan v. Chicago,* 84 Ill., 227; and *People v. United States,* 93 Ill., 30.

The last named cases were both cited with approval by this court in *Van Brocklin v. State of Tennessee, supra.* Counsel have also cited the case of *Atlantic and Pacific Railroad Company v. LeSeur,* 2 Arizona, 428 (1 L. R. A. 244), upon the proposition that the bonds of a municipality of a territory are not exempt from taxation by the states. This case is neither directly nor by analogy in point for counsel's contention. In fact, it does not, as we think, have the slightest relevancy here.

In that case a railroad was incorporated under an act of Congress. The taxation imposed was under the authority of a statute passed by the territory. The territorial government existed only by virtue of the acts of Congress. The laws of the territory were valid when not *disapproved* by Congress. The taxing law in question had been passed by the

legislature of the territory and had not been disapproved by Congress.

The necessary result was that the railroad was, in fact, being taxed, by authority of Congress itself and such was the holding of the court. Congress may, undoubtedly, directly or indirectly, tax the property of the general government or its agencies or instrumentalities. The *very reverse* of this is the question involved in this case, to-wit, can a state tax the agencies or instrumentalities of the Federal Government or their operations?

III.

Counsel for defendant in error, it seems to us, have missed the real point of our contention with reference to the unconstitutionality of section 3, chapter 328, Laws of Minnesota for 1907, which attempts to exclude savings banks from the exemption allowed to other holders of real estate mortgages within the state of Minnesota.

We have not contended for mathematical equality or absolute uniformity of taxation. We have conceded the right of the state to classify subjects for taxation. Our contention is as follows:

(a) The general tax imposed by section 839 of the Revised Laws of Minnesota for 1905

is a property tax, pure and simple, and the Supreme Court of Minnesota in this case has squarely so held.

(b) The registry tax provided for by said chapter 328, Laws of Minnesota for 1907, is a tax upon mortgages.

(c) In imposing a registry tax upon the mortgages held by savings banks and by also subjecting such mortgages to general taxation under section 839 of the Revised Laws of Minnesota for 1905 while excepting other holders of such mortgages from any and all other forms of taxation the state of Minnesota is denying to the plaintiff in error the equal protection of the laws or, as sometimes expressed, the protection of equal laws, guaranteed by section 1 of the 14th Amendment to the Constitution of the United States.

Under the Constitution of the state of Minnesota certain corporations are subjected to what is known as a gross earnings tax. This form of taxation is a marked exception to the general rule of taxation prescribed by the Constitution of the state of Minnesota and applies to only a limited number of corporations.

It will be noticed that by section 3 of the registry tax law of 1907 such corporations are exempted from paying the mortgage registry tax. There is, of course, an obvious reason for this exemption and the legislature seems

to have recognized the propriety and perhaps the necessity of thus excepting such corporations from the payment of the mortgage registry tax. In the case of savings banks, however, the legislature not only imposes the registry tax, but excepts such savings banks from the exemption from all other forms of taxation as to such real estate mortgages allowed to other holders thereof.

The only reason given by the Supreme Court of the state of Minnesota for thus imposing double taxation upon savings banks with respect to real estate mortgages is that by section 839 of the Revised Laws of 1905 a different and more favorable method of taxation is provided for savings banks than is provided for other corporations by sections 838 and 840 of the same laws.

We have already pointed out that under sections 838, 839 and 840, one thing is aimed at and that is substantially equal and uniform taxation of property. The Supreme Court of Minnesota in its decision holds that the tax imposed by each of those sections is a *property tax* and the Constitution of Minnesota, as it existed when these sections were passed, absolutely required *equality and uniformity of taxation.* Inasmuch as all three sections relate to a property tax and vary only slightly in the method of assessment or ascertaining the value of the property, we insist that such a

difference in method, in fact slight and unsubstantial, constitutes no reasonable basis for a discrimination so marked and substantial against savings banks. All three sections are aimed at the same thing, to-wit, *equal and uniform taxation of property.* The Constitution of the state required this and it is evident that said sections comply with the spirit of this requirement. We submit that an attempt to base a classification upon a mere difference in method, is arbitrary and unreasonable.

An examination of counsel's brief in this case will show that they have in no respect met this point.

April 26th, 1913.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 39

THE FARMERS AND MECHANICS SAVINGS BANK OF MINNEAPOLIS, PLAINTIFF IN ERROR,

vs.

THE STATE OF MINNESOTA, DEFENDANT IN ERROR.

SUPPLEMENTAL BRIEF FOR DEFENDANT IN ERROR.

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JAMES ROBERTSON,
County Attorney, Minneapolis, Minnesota,
Attorneys for Defendant in Error.

(22,730)

INDEX.

Cases Cited.

SUPREME COURT OF THE UNITED STATES.

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THE FARMERS AND MECHANICS SAVINGS BANK OF MINNEAPOLIS, PLAINTIFF IN ERROR,

vs.

THE STATE OF MINNESOTA, DEFENDANT IN ERROR.

SUPPLEMENTAL BRIEF FOR MINNESOTA.

Statement of Facts.

This action is brought to this court by a writ of error from the Supreme Court of Minnesota to review a judgment of that court against the plaintiff in error for $4,823.60. The judgment was for taxes (1908), penalties, and costs. The plaintiff in error (hereafter called the Bank) claims that no taxes should have been levied against it, because the nature and character of certain of its property was such that it should not have been included in its assets when the State was ascertaining a basis for its taxation.

The rule for the taxation of savings banks in Minnesota is to ascertain its assets, other than real estate and United States bonds, and subtract from those assets the deposits.

The assets of the Bank, not real estate nor U. S. bonds (May 1, 1908).....	$11,951,816.02
The deposits were then.....	11,666,050.27
Net personal property surplus.....	285,765.75

The Bank claims that the State courts erred in finding any surplus whatever. The alleged error consisted in including in the assets three property items, as follows:

(1)	Bonds of municipalities of Indian Territory	$278,000
(2)	Bonds of municipalities of Oklahoma Territory	423,100
(3)	Notes secured by mortgages on Minnesota real estate on which mortgages a registry tax had been paid	161,150

The Bank claims that items one (1) and two (2) should have been omitted from consideration, because these bonds were so related to the Federal Government (being bonds of municipalities of Territories) as to be the same as Government bonds, or not taxable.

The Bank claims that the third (3d) item was not taxable because it had been already taxed once through a registry tax, and that the use of this item in computing the Bank's tax would be double taxation.

The State claims that all three items are taxable property, and if not may still be used in the computation of the taxes of the Bank.

The notes secured by real estate mortgages which have been recorded in Minnesota were not thereby exempted from taxation in the hands of the Bank or any other person subject to taxation in Minnesota. The statute of Minnesota providing for the registry tax seems on its face to make its payment cover not only all taxes upon the security, but also on the debt secured. The Supreme Court of Minnesota has construed that statute to the contrary. The statute is chapter 328, General Laws of Minnesota, 1907. The first case construing it is Mutual Benefit Life Ins. Co. *vs.* Martin County, 104 Minn., 179. The first two points, stated in the heading by the judge who wrote the opinion, are:

> "Chapter 328, laws 1907, known as the mortgage registry tax law, is constitutional. It provides for a

> proper classification of the subjects of taxation and for a uniform tax upon the subjects of the class."
>
> "The subject of taxation under this statute is the security and not the debt secured."

The plaintiff insurance company argued that the statute was unconstitutional because it did not operate uniformly upon all members of "the same class of subjects." The court's answer to this was:

> "The statute requires the payment of a fee of fifty cents for each $100 of the debt secured, regardless of the time when the debt matures. The security is regarded as the same, whether the debt is payable in one or in ten years; and as the tax is on the security, and not on the money secured, it operates uniformly upon all the subjects of the class" (pp. 184, 104 Minn.).

The exact claim made by the insurance company was that it was being required to pay taxes twice on its mortgages on real estate in Minnesota, once by registry tax and once by a 2 per cent tax on its premiums received in Minnesota. The question of double taxation was squarely presented to the Supreme Court. It was decided "after exhaustive arguments." The court held that there was not double taxation, for the reason that the holders of mortgage notes must pay taxes generally on the indebtedness secured (*i. e.*, the credit), and specifically on the value involved in the right to take and record security. It was assumed throughout the opinion that the mortgage registration tax law would be unconstitutional as not uniform as to the same class of subjects if it was to be applied to the indebtedness secured. That might be outstanding one year or ten. Taxing one once for a credit continuing ten years and others once for a credit lasting one year is not uniformity of taxation.

In State *ex rel.* Hildebrandt *vs.* Fitzgerald, 117 Minn., 192, the Supreme Court of Minnesota referred repeatedly to and quoted from the Martin Co. case, *supra*, and particu-

larly approved its holding that the law was constitutional as providing a uniform classification and a tax on the security not upon the indebtedness.

See original brief of defendant, page 16.

Undoubtedly this court will regard the decisions of the Supreme Court of Minnesota as conclusive as to the proper construction of its own tax laws.

Chicago Theological Sem. *vs.* Illinois, 188 U. S., 662, 674.

Fairfield *vs.* County of Gallatin, 100 U. S., 47, 52.

Any other construction would make the law contravene the constitutional requirement of uniform taxation. Such holding would not help the Bank.

Probably the legislature of Minnesota had the New York mortgage registration tax law (Tax Law, secs. 250-267) before it when it adopted the Minnesota law in question. The New York law does not exempt savings banks from the payment of their other taxes (secs. 251 and 189), though they pay registration taxes. The exemption paragraph of the law is much like that of Minnesota, and particularly so in not exempting savings banks. It was assumed, no doubt, that the Minnesota tax on savings banks was of the same character as the New York tax, a franchise tax. The State so believed when this action began. Whether the tax was a franchise tax or a property tax is not a matter of the highest importance. The great question is whether taxes have been so laid upon the Bank that it is only bearing its fair share of the burdens of government and has had the equal protection of the laws.

Has the taxation been, not identical, but fair?

Mortgage Registry Tax Not an Indebtedness.

The State therefore denies that the plaintiff in error has lost any rights that others have by the provisions of chapter 328. As we have seen the Supreme Court of Minnesota

held both before and after its decision of this case that the payment of a registry tax was not a payment of a tax on the indebtedness secured.

The indebtedness secured by the mortgage is property All property in Minnesota not specially exempted by the Constitution is taxable. Such indebtedness is not exempt. Therefore it is taxable as a credit against the creditor or his agent in charge thereof if in the State, and the plaintiff has not been discriminated against; simply treated as any one else in this respect.

Tax in Question Not Specific.

The plaintiff in error does not pay a tax directly on the mortgage indebtedness, but only on its property and then in a manner beneficial to itself and prejudicial to other persons. The assets of the Bank admitted to be proper for consideration in the ascertainment of its tax were $11,089,066.02 (Transcript, pp. 5, 11). The State might have taxed this amount to the Bank. In 1911 it abandoned its practice of deducting debts from the amount of moneys and credits, and now levies generally its tax upon all of the money and credits of a person or corporation (not incorporated banks) without a deduction for indebtedness, but at a small rate.

State, etc., *vs.* Minnesota Tax Commission, 117 Minn., 159.

The substitution of the surplus (diminished from $285,765.75 to $151,250.00) for a possible $11,089,066.02 or more, as the assessed valuation of the Bank is a "special manner" of taxation which is so favorable to the Bank as to take its taxation out of the rules of ordinary taxation and to justify the State in requiring it to use as an element in computing its tax a class of property either not taxable or otherwise taxed.

U. S. Express Co. *vs.* Minnesota, 223 U. S., 335.

The plaintiff is not discriminated against, but simply taxed in different and unprejudicial manner.

Fourteenth Amendment Inapplicable.

The Fourteenth Amendment does not attempt the regulation of the details of taxation. That this is the holding of this court is obvious from its decision of the Bell's Gap and other cases cited in main brief, pp. 19-21.

We add

Brown-Forman Co. *vs.* Kentucky, 217 U. S., 563, 572-574.

> "Fundamental to the very existence of the governmental power of the States as is this function of taxation, it is nevertheless subject to the beneficent restriction that it shall not be so exercised as to deny to any the equal protection of the law. But this restriction does not compel the adoption of 'an iron rule of equal taxation,' nor prevent variety in methods of taxation, or discretion in the selection of subjects, or classification for purposes of taxation of either properties, business, trades, callings or occupations (p. 572).
>
> "In the case of intangible property, the law does not look for absolute equality, but to the more practical consideration of collecting the tax upon such property."
>
> Union Transit Co. *vs.* Kentucky, 199 U. S., 194, 205.

The clause of section 3, chapter 328, aforesaid, which is claimed to be in conflict with the Fourteenth Amendment, because capriciously classifying for taxation, includes in it "banks, savings banks, and trust companies." These three classes of institutions have common characteristics and are grouped together in the "Revised Laws, 1905," the present Minnesota Code, by subheads under the general head of

"Financial Corporations" (sections 2967-3047), and are the only corporations included under that general head except building associations. The grouping of banks, savings banks, and trust companies is natural, usual and proper, and their relations to mortgages and mortgage taxation are in many respects similar. The legislature may have believed when it passed chapter 328 that these "Financial Corporations" would compel the borrowers to pay the mortgage registry tax.

The infirmity in appellant's argument is that it assumes that a discrimination exists against the Bank because it is taxed in a different way from that by which other persons are taxed. He has not shown that his client has not gained more than it has lost by the method of taxation employed, and the burden of proof is on him at this point.

> "A just ground for classification may have existed. Every presumption should be indulged in favor of the constitutionality of the legislation."
>
> Home Telephone Co. *vs.* Los Angeles, 211 U. S., 265, 281.

A just ground for classification did exist as is shown in the opinion of the court below. See Transcript, pp. 25, 26.

The Bank was also favored in that no franchise tax was imposed upon it as is done in New York, and it was not taxed on an amount of its assets equal to its deposits, but the tax left to be paid by the depositors in whose hands a considerable amount was exempt and who seldom returned any credits for taxation, if our legislators and court have observed rightly.

Taxability of Municipal Bonds of Municipalities Located in Territories When the Bonds Were Issued.

The claim of the State that the tax upon the surplus of the plaintiff Bank is not a specific tax upon any particular securities is material in the consideration of the relation

of the bank tax to the exemption, if any, of the bonds of municipalities in territories when the bonds were issued. The idea that a State may not tax a bank having eleven millions assets on a surplus estimated for taxation at $151,250, only 56 per cent of its true amount ($285,765.75), without the bank claiming that over $700,000 of municipal bonds held by it had been taxed, seems absurd. The unit of taxation of savings banks in Minnesota is its entire personal property, *net,* not the specific items of which that property consists.

The constitution of Minnesota required the taxation of all property. The entire property of the Bank should have been taxed. The system of taxation of savings banks, taken as a whole, was the method adopted for the taxation of all their property. The intended effect was no doubt to tax the Bank as a going concern, not "a congeries of items." It did so fairly, even favorably.

The Nature of Oklahoma Municipal Bonds.

The municipal bonds of Oklahoma are not different from other municipal bonds. They were provided for by due legislation; were authorized by the territorial legislature.

The Organic Act of May 2, 1890, said:

> "The legislative power of the Territory shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States, but * * * no tax shall be imposed upon the property of the United States."

The territorial legislature passed an act in 1897 providing for various municipal bond issues:

> "The Territory of Oklahoma, every county, every municipal corporation, the board of education of every city, and every school district is hereby authorized to fund its outstanding legal warrant indebtedness in the order of registration and *to issue bonds* for that purpose" (art. 1, sec. 1).

> "Whenever there shall exist against any municipality in the Territory of Oklahoma, judgments * * * the proper officers of such municipality may, by agreement with the judgment creditors, issue the bonds of such municipality in settlement of such judgments," etc. (art. 2, sec. 1).

These and other similar laws were passed by the legislature of the Territory of Oklahoma and incorporated into the laws of the State.

See "General Statutes of Oklahoma of 1908."

Also, *Schedule* Constitution of Oklahoma, sec. 2.

No limitation upon taxation of property, because related to the Federal Government, was anywhere created, except that above cited and a clause in the State constitution of similar import.

This constitutional provision was:

> "No taxes shall be imposed by the State upon lands or property belonging to or which may hereafter be purchased by the United States or reserved for its use" (Const., art. 1, sec 3, l. c.).

This shows that the bonds of Oklahoma municipalities were presumptively taxable, as against the objections raised in this action, unless they were the property of the United States or reserved for its use. Herein lies the difference between this case and Grether *vs.* Wright, 75 Fed., 742. The bonds in that case were truly "reserved for the use" of the Federal Government. They were in form the bonds of the District of Columbia, but in substance a part of a scheme used by the Federal Government for the anticipation of revenue to be derived by it through its taxation of the District. Congress pledged "the faith of the United States" to their payment. Congress exempted "these bonds from taxation everywhere within the limits of the United States, whether by Federal, State, or municipal authority" (p. 753). Their issue was a governmental operation.

The Oklahoma territorial municipal bonds in question

were not issued for the use of the Federal Government; the Nation's faith was not behind them; they performed no Federal function; they were not exempted from taxation.

It was perhaps material to inquire whether these bonds were issued for private or for governmental purposes. Such question was not introduced into the case by either pleadings or evidence. The presumption then is that the bonds were of such a kind as to sustain the taxation of the Bank on their account.

South Carolina *vs.* United States, 199 U. S., 437.
Vilas *vs.* Manilla, 220 U. S., 345.
Audit Co. of N. Y. *vs.* City, 185 Fed., 349.
City of Louisville *vs.* Commonwealth, 1 Duvall, 295.

There was a marked difference between the District of Columbia and ordinary Territories in their relations to the Federal Government.

> "* * * the Territory itself is the fountain from which rights ordinarily flow. It is true that Congress might intervene, just as in the case of a State the Constitution does, and the power that can alter the Constitution might. But the rights that exist are not created by Congress or the Constitution, except to the extent of certain limitations of power. The District of Columbia is different, because there the body of private rights is created and controlled by Congress and not by a legislature of the District."
>
> Kawananakoa *vs.* Polybank, 205 U. S., 349, 353-354.

The same idea of the practical independence of Territories was expressed by a United States circuit judge as follows:

> "The legislative power to be exercised by the territorial legislature is the legislative power of the Territory, not that of the United States. * * * Territorial statutes have a distinct and well-defined character of their own."
>
> Adams Express Co. *vs.* Denver & R. G. Ry. Co., 16 Fed., 712, 715.

In Honolulu Transit Co. *vs.* Wilder, 211 U. S., 137, the transit company had been taxed because of its franchise. This franchise had been given the Hawaiian legislature. The transit company objected to the tax on the ground that its franchise was derived from Congress. This court, in overruling this objection, speaking by Mr. Justice Holmes, said:

> "There is no doubt that local legislation under the authority of Congress previously granted is treated as emanating from its immediate, not from its remote source, in determining rights and liabilities" (page 142).

The local "control" of property by the Federal Government is substantially distinct from "the exercise of government."

> Gromer *vs.* Standard Dredging Co., 224 U. S., 362, 369-370.

This case speaks of the government of Porto Rico as "an autonomy similar to that of the States and Territories."

Examples of Lawful and Unlawful Taxation.

Another distinction between a case in which there is an interference with Federal agencies and operations and the case now being considered is drawn with accuracy and clearness in Railroad Company *vs.* Peniston, 85 U. S., 5, pages 32-37. As the conclusion stated by Mr. Justice Strong in delivering the majority opinion of the court is quoted on page 12 of defendant's brief further reference to this case is omitted. If the taxation of the Union Pacific Railroad Company, "an agent of the general government" (p. 32) by a State was lawful, certainly the taxation of a bank on its property invested in part in bonds, issued by a distinct municipality, in a Territory having the power to create and creating such municipality, is not rendered unlawful because of any interference with the Federal Government.

Especially is this so when the Federal Government had sanctioned the merging of that Territory into a State before the property was assessed or the tax levied, and possibly before the bonds were actually issued.

A tax, which is objectionable because interfering with a Federal agency, is shown in sharp contrast with a tax upon property somewhat connected with governmental operations in—

Williams *vs.* Talladega, 226 U. S., 404.

It is there held that a tax on the property of a telegraph company is lawful (p. 416); on Government messages transmitted by the same company, unlawful (p. 419).

The points made as to the Oklahoma municipal bonds are equally applicable to the bonds of municipalities that were in Indian Territory.

Municipal Bonds Generally Taxable.

No claim is made, and none could be, that the bonds in question were not taxable, except on the ground that they are practically United States bonds. If they were the municipal bonds of a State or any of its municipalities, they were taxable.

Bonaparte *vs.* Tax Court, 104 U. S., 592.

They were such when taxed. They could not have obtained a permanent, unchangeable status toward the United States, such that the State of the residence of the holder of such bonds could never tax them. The bonds in question were not "United States" bonds and therefore to be deducted from the assets of the plaintiff Bank before they were listed for the purposes of taxation (sec. 839, *supra*); nor were they the securities, agencies, or instrumentalities of the United States.

No Federal Question Involved.

1. The taxation of the plaintiff in error was in no respect heavier, and in some respects lighter, than the taxation of the ordinary citizen.

2. The complaint that plaintiff in error was called on to pay taxes on the indebtedness secured by mortgages on real estate in Minnesota is a complaint which every person in Minnesota could have made with equal force and propriety.

3. The bonds of municipalities created by and situated in either Indian Territory or the Territory of Oklahoma were taxable in Minnesota when owned by persons in that State.

The foregoing points have been sustained by the foregoing brief.

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Attorney General of Minnesota;
JAMES ROBERTSON,
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Attorneys for Defendant in Error.

OPINION

FARMERS AND MECHANICS SAVINGS BANK OF MINNEAPOLIS *v.* STATE OF MINNESOTA.

ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

No. 39. Argued May 8, 1913.—Decided February 24, 1914.

A question though novel itself may be solved by the application of principles long established.

The entire independence of the General Government from any control by the respective States is fundamental; and States may not tax agencies of the Federal Government. *M'Culloch* v. *Maryland*, 4 Wheat. 316.

Territories are instrumentalities established by Congress for the gov-

ernment of the people within their respective borders, with authority to subdelegate the governmental power to the municipal corporations therein, and the latter are therefore instrumentalities of the Federal Government.

A tax upon the exercise of the function of issuing bonds is a tax upon the operations of the municipal government; and to tax the bonds as property in the hands of the holder is in effect a tax upon the right of the municipality to issue them.

A tax to any extent on bonds issued by a government or subdivision thereof, however inconsiderable, is a burden on the operation of that government. If allowed at all it may be carried to an extent which shall entirely arrest such operations. *M'Culloch* v. *Maryland*, 4 Wheat. 316.

A State may not tax bonds issued by a municipality of a Territory of the United States. And so *held* as to an attempt by the State of Minnesota to tax bonds issued by municipalities of the Indian Territory and the Territory of Oklahoma held by corporations in Minnesota.

There is no provision of law that makes obligations of municipalities within the Indian Territory or the Territory of Oklahoma obligations of the Territory, nor were such obligations assumed by the State of Oklahoma on admission to Statehood.

Exemption from taxation is a material element in the obligation of a bond issued by a municipality, and it will not be presumed that Congress would enact legislation that would impair that obligation by eliminating the exemption without the clearest legislative language expressing it.

Where bonds are exempted from state taxation under the Federal Constitution they cannot be included as assets in ascertaining the surplus of the corporation owning them for the purpose of imposing a state property tax thereon.

When a state statute is attacked as denying equal protection of the law by one class of those excepted from its benefits, the question of constitutionality can be confined to the particular class attacking it, and if there is reasonable ground for the classification as to that class, it will be upheld to that extent without inquiring whether it is constitutional as to the other classes affected by it.

A provision in a state tax statute excepting from an exemption banks, savings banks and trust companies, is not unconstitutional under the Fourteenth Amendment as discriminating against savings banks as a class and denying them the equal protection of the law. The state court having held that there were reasonable grounds for the

classification, this court so holds in regard to the statute of Minnesota involved in this action.

114 Minnesota, 95, reversed in part.

THE facts, which involve the constitutionality of certain tax statutes of Minnesota as applied to bonds issued by municipalities in Indian Territory and the Territory of Oklahoma, are stated in the opinion.

Mr. William A. Lancaster, with whom *Mr. C. B. Leonard* and *Mr. Milton D. Purdy* were on the brief, for plaintiff in error:

The tax in question is a property tax. The general opinion of the profession has been in favor of non-taxability of bonds of territorial municipalities. Federal agencies and instrumentalities are non-taxable by the States. The Federal Government cannot tax the bonds of the municipalities of a State. That part of § 3, of c. 328, Laws of 1907, permitting taxation on bonds of territorial municipalities is unconstitutional.

In support of these contentions, see *A., T. & S. Fe Ry.* v. *Sowers*, 213 U. S. 55; *Bank of Commerce* v. *New York*, 2 Black, 620; *Banks* v. *Supervisors*, 7 Wall. 26; *Binns* v. *United States*, 194 U. S. 486; *Bonaparte* v. *Tax Court*, 104 U. S. 592; *Faribault* v. *Missner*, 20 Minnesota, 396; *Grether* v. *Wright*, 75 Fed. Rep. 742; *Hibernia Savings Society* v. *San Francisco*, 200 U. S. 310; *Home Savings Bank* v. *Des Moines*, 205 U. S. 503; *McCulloch* v. *Maryland*, 4 Wheat. 316; *Mercantile Bank* v. *New York*, 121 U. S. 138; *Mormon Church* v. *United States*, 136 U. S. 1; *Murphy* v. *Ramsey*, 114 U. S. 15; *National Bank* v. *Yankton*, 101 U. S. 129; *Noonan* v. *Stillwater*, 33 Minnesota, 198; *Plummer* v. *Coler*, 178 U. S. 115; *Pollock* v. *Farmers' L. & T. Co.*, 157 U. S. 429; *Snow* v. *United States*, 18 Wall. 317; *Society for Savings* v. *Coite*, 6 Wall. 594; *State* v. *Canda C. C. Co.*, 85 Minnesota, 457; *State* v. *Duluth Gas*

Co., 76 Minnesota, 96; *State* v. *Pioneer Savings Co.*, 63 Minnesota, 80; *State* v. *Weyerhauser*, 68 Minnesota, 353; *The Banks* v. *The Mayor*, 7 Wall. 16; *United States* v. *Railroad Company*, 17 Wall. 322; *Weston* v. *Charleston*, 2 Pet. 449, 468.

Mr. James Robertson and *Mr. Lyndon A. Smith*, Attorney General of the State of Minnesota, for defendant in error:

The bonds in question were not bonds of a territorial municipality on May 1, 1908. A territorial government is not responsible for the bonds issued by a municipal corporation thereof. The United States Government is not responsible for the liabilities incurred by a territorial government. A municipal corporation of a Territory of the United States is not such an agency of the Federal Government that its bonds are bonds or obligations of the United States.

Chapter 328, Minnesota Laws 1907, in excepting savings banks from the exemption of all other taxes allowed generally to other holders of real estate mortgages, paying the registry fee, does not unlawfully discriminate against such savings banks and does not violate the equality clause of the Fourteenth Amendment.

In support of these contentions, see: *A. & P. R. R.* v. *Le Seur*, 2 Arizona, 428; *Bells Gap R. R.* v. *Pennsylvania*, 134 U. S. 232; *Cent. Pac. R. R.* v. *California*, 162 U. S. 119; *Central Pac. R. R.* v. *California*, 162 U. S. 121; *Cotting* v. *Kansas Stock Yards*, 183 U. S. 79; *Connolly* v. *Sewer Pipe Co.*, 184 U. S. 540; 1 Cooley on Tax., 3d ed., §§ 389–397; *Del. R. R. Tax Cases*, 18 Wall. 206; *Duncan* v. *Missouri*, 152 U. S. 377; *Dyer* v. *Melrose*, 215 U. S. 594; *Elmira Sav. Bank* v. *Davis*, 125 N. Y. 595; *Flint* v. *Stone-Tracy Co.*, 220 U. S. 108; *Gennette* v. *Brooklyn*, 99 N. Y. 296; Gray, Lim. on Taxing Power, § 1630; *Grether* v. *Wright*, 75 Fed. Rep. 742; *Hibernia Saving Society* v. *San Fran-*

cisco, 200 U. S. 314; *Home Ins. Co.* v. *New York*, 134 U. S. 594; *Kan. Pac. R. R. Co.* v. *A., T. & S. F. R. R.*, 112 U. S. 414; *Lane Co.* v. *Oregon*, 7 Wall. 77; *Merc. Natl. Bank* v. *Mayor*, 172 N. Y. 35; *Met. St. Ry. Co.* v. *New York*, 199 U. S. 1; *Moore* v. *Treasurer*, 7 Wyoming, 292; *Mutual Benefit Ins. Co.* v. *Martin Co.*, 104 Minnesota, 179; *M'Culloch* v. *Maryland*, 4 Wheat. 316; *McMillen* v. *Anderson*, 95 U. S. 37; *Nat. Bank* v. *Kentucky*, 9 Wall. 353; *Osborne* v. *Bank*, 9 Wheat. 738; *People* v. *Ronner*, 185 N. Y. 285; *Providence Bank* v. *Billings*, 4 Pet. 514; *Phœnix Fire Ins. Co.* v. *Tennessee*, 161 U. S. 174; *Railroad Co.* v. *Peniston*, 18 Wall. 5; *St. P. &c. Ry. Co.* v. *Todd*, 142 U. S. 242; *S. W. Oil Co.* v. *Texas*, 217 U. S. 122; *State* v. *Fitzgerald*, 117 Minnesota 192; *State Tax on Foreign Held Bonds*, 15 Wall. 300; *State* v. *West. Un. Tel. Co.*, 96 Minnesota, 22; *State* v. *West. Un. Tel. Co.*, 165 Missouri, 521; *Thompson* v. *N. P. Ry.*, 9 Wall. 579; *Van Brocklyn* v. *Kentucky*, 117 U. S. 151; *West. Un. Tel. Co.* v. *Atty. Gen.*, 125 U. S. 530; *West. Un. Tel. Co.* v. *Massachusetts*, 125 U. S. 530; *West. Un. Tel. Co.* v. *Texas*, 105 U. S. 460; *West. Un. Tel. Co.* v. *Pac. R. R. Co.*, 120 Fed. Rep. 984; *Weston* v. *Charleston*, 2 Pet. 467; *Woodruff* v. *Oswego Starch Factory*, 177 N. Y. 23.

Mr. Justice Pitney delivered the opinion of the court.

This writ of error brings under review a judgment of the Supreme Court of Minnesota (114 Minnesota, 95) affirming the judgment of a lower court, in proceedings for the collection of taxes assessed against plaintiff in error for the year 1908. Plaintiff in error is a savings bank, having no capital stock, and was taxable under § 839, R. L. 1905, which provides for ascertaining the surplus remaining after deducting from its assets (other than real estate, which is separately assessed), the amount

of the deposits and of all other accounts payable; the surplus to be taxed as "credits." The Supreme Court of Minnesota held that this section imposes not a franchise but a property tax, and that the surplus of savings banks as thus determined is taxable property. This construction is not questioned here; perhaps is not open to question.

Two Federal questions are raised.

First, the Savings Bank insisted in the state courts, and here renews the insistence, that certain bonds issued by municipalities in Indian Territory and in the Territory of Oklahoma, held by the bank, amounting to about $700,000 in value, should have been omitted from the list of its personal assets, for the reason that bonds of this character are not taxable by the State.

This question, although novel, is to be solved by the application of principles long established.

It was laid down by Mr. Chief Justice Marshall, speaking for this court in *M'Culloch* v. *Maryland*, 4 Wheat. 316, 430, 436, that the State could not constitutionally impose taxation upon the operations of a local branch of the United States Bank, because the bank was an agency of the Federal Government, and the States had no power, by taxation or otherwise, to hamper the execution by that government of the powers conferred upon it by the people. The supremacy of the Federal Constitution and the laws made in pursuance thereof, and the entire independence of the General Government from any control by the respective States, were the fundamental grounds of the decision. The principle has never since been departed from, and has often been reasserted and applied. *Osborn* v. *U. S. Bank*, 9 Wheat. 738, 859; *Home Savings Bank* v. *Des Moines*, 205 U. S. 503, 513; *Grether* v. *Wright*, 75 Fed. Rep. 742, 753.

State taxation of national bank shares, as permitted by the act of Congress, without regard to the fact that a

part or the whole of the capital of the bank is invested in national securities which are exempt from taxation (*Van Allen* v. *Assessors*, 3 Wall. 573, 583; *Bradley* v. *People*, 4 Wall. 459; *National Bank* v. *Commonwealth*, 9 Wall. 353, 359), is an apparent, not a real, exception. The same is true of taxes upon the mere property of agencies of the Federal Government. (*Thomson* v. *Pacific Railroad*, 9 Wall. 579, 589; *Railroad Co.* v. *Peniston*, 18 Wall. 5, 32, 34.) Indeed, these exceptions rest upon distinctions that were recognized in the decision of *M'Culloch* v. *Maryland*. Chief Justice Marshall said, in closing the discussion: "This opinion . . . does not extend to a tax paid by the real property of the bank, in common with the other real property within the State, nor to a tax imposed on the interest which the citizens of Maryland may hold in this institution, in common with other property of the same description throughout the State. But this is a tax on the operations of the bank, and is, consequently, a tax on the operation of an instrument employed by the government of the Union to carry its powers into execution. Such a tax must be unconstitutional." For a fuller discussion of the *Van Allen Case*, see *Home Savings Bank* v. *Des Moines*, 205 U. S. 503, 517.

The government of the respective Territories in question was that provided by the act of Congress of May 2, 1890 (26 Stat. 81, c. 182, pp. 81, 93), of which the first 28 sections created a temporary government for the Territory of Oklahoma; while § 29 (p. 93), and subsequent sections established laws for the government of what was thereafter to be known as the Indian Territory, but without conferring general powers of local self-government. To the territorial government of Oklahoma legislative power was granted (§ 6), extending to "all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States." Municipal corporations were in contemplation. Sec. 7 provided that

the legislative assembly should not authorize the issuing of any bond or evidence of debt by any county, city, town, or township for the construction of any railroad; thus recognizing that the borrowing power might be employed for other purposes. By § 11, certain provisions of the Compiled Laws of Nebraska, in force November 1, 1889, so far as locally applicable, were extended to and put in force in the Territory until after the adjournment of the first session of its legislative assembly; among these being Chapter 14, entitled "Cities of the second class and villages," which contains provisions for the organization of municipal corporations, with power to borrow money for public purposes. The Indian Territory was not made an "organized Territory," but by § 31 certain general laws of the State of Arkansas, as published in Mansfield's Digest (1884), were put in force there until Congress should otherwise provide; among these, the chapter relating to municipal corporations (§§ 722–959).

It is not disputed that the municipal bonds now in question were lawfully authorized and are in every respect valid obligations of the respective municipalities. Except as such obligations they would hardly be treated as taxable property in the hands of the holder.

The relation of the organized Territories to the United States has been frequently adverted to. In *National Bank* v. *County of Yankton*, 101 U. S. 129, 133, which had to do with the organic act of the Territory of Dakota (12 Stat. 239), the court, speaking by Mr. Chief Justice Waite, said:

"All territory within the jurisdiction of the United States not included in any State must necessarily be governed by or under the authority of Congress. The Territories are but political subdivisions of the outlying dominion of the United States. Their relation to the general government is much the same as that which counties bear to the respective States, and Congress may

legislate for them as a State does for its municipal organizations. . . . Congress may not only abrogate laws of the territorial legislatures, but it may itself legislate directly for the local government. It may make a void act of the territorial legislature valid, and a valid act void. In other words, it has full and complete legislative authority over the people of the Territories and all the departments of the territorial governments. It may do for the Territories what the people, under the Constitution of the United States, may do for the States."

The Territory of Oklahoma, therefore, was an instrumentality established by Congress for the government of the people within its borders, with authority to subdelegate the governmental power to the several municipal corporations therein. These corporations were established for public and governmental purposes only, and exercised their powers and performed their functions as agents of the central authority. With respect to Indian Territory, the situation under the act of 1890 was somewhat different, and the municipal corporations derived their authority directly from the act of Congress.

No doubt, as is usual in such cases, the people of the respective municipalities had a more immediate and direct interest than others in the local government, and in the local improvements that presumably may have been constructed with the proceeds of the municipal bonds. But this interest was that of citizens and taxpayers, not that of proprietors. And the policy of Congress, as manifested in its legislation upon the subject, had regard not merely, nor even chiefly, for the particular and immediate interests of the several municipalities. It looked to the promotion of the prosperity and welfare of the whole people of the United States, through the development of organized self-governing communities—afterwards to become States of the Union—throughout the whole of the public domain. With statehood as the ultimate aim and

purpose, the organic acts were consciously framed. They were frequently if not always entitled—"An act to provide a *temporary* government for the Territory," etc.; and so reads the title of the act of May 2, 1890.

In our opinion, therefore, the municipalities of the Territory of Oklahoma and of Indian Territory were instrumentalities and agencies of the Federal Government, with whose operations the States were not permitted to interfere by taxation or otherwise, and the issuing of municipal bonds was the performance of a governmental function, within the established doctrine. And we deem it immaterial that these bonds were not guaranteed by the United States, or even (in the case of the Oklahoma bonds) by the central government of the Territory.

The Supreme Court of Minnesota, conceding that the municipalities were Federal agencies in the performance of governmental functions, yet deemed that a material narrowing of the doctrine of *M'Culloch* v. *Maryland*, was to be inferred from an expression contained in the opinion of this court in *National Bank* v. *Commonwealth*, 9 Wall. 353, 362, where it was said: "The principle we are discussing has its limitation, a limitation growing out of the necessity on which the principle itself is founded. That limitation is, that the agencies of the Federal government are only exempted from state legislation, so far as that legislation may interfere with, or impair their efficiency in performing the functions by which they are designed to serve that government." And from a like expression contained in the opinion in *Railroad Company* v. *Peniston*, 18 Wall. 5, 36: "It is, therefore, manifest that exemption of Federal agencies from state taxation is dependent, not upon the nature of the agents, or upon the mode of their constitution, or upon the fact that they are agents, but upon the effect of the tax; that is, upon the question whether the tax does in truth deprive them of power to serve the government as they were intended to

serve it, or does hinder the efficient exercise of their power. A tax upon their property has no such necessary effect. It leaves them free to discharge the duties they have undertaken to perform. A tax upon their operations is a direct obstruction to the exercise of Federal powers."

But we deem it entirely clear that a tax upon the exercise of the function of issuing municipal bonds is a tax upon the operations of the government, and not in any sense a tax upon the property of the municipality. And to tax the bonds as property in the hands of the holders is, in the last analysis, to impose a tax upon the right of the municipality to issue them. In *Weston* v. *City Council of Charleston*, 2 Pet. 449, 466, 468, which involved the right of the city, acting under the authority of the State of South Carolina, to ordain a tax upon United States stock in the hands of the owner, Mr. Chief Justice Marshall, speaking for the court, after reaffirming the principles settled in *M'Culloch* v. *Maryland*, said (p. 468): "The American people have conferred the power of borrowing money on their government, and by making that government supreme, have shielded its action, in the exercise of this power, from the action of the local governments. The grant of the power is incompatible with a restraining or controlling power, and the declaration of supremacy is a declaration that no such restraining or controlling power shall be exercised. The right to tax the contract to any extent, when made, must operate upon the power to borrow before it is exercised, and have a sensible influence on the contract. The extent of this influence depends on the will of a distinct government. To any extent, however inconsiderable, it is a burthen on the operations of government. It may be carried to an extent which shall arrest them entirely."

It is on this ground that United States bonds have always been held exempt from taxation under authority of the States. By like reasoning it has come to be recognized

that bonds issued by the States are not taxable by the Federal Government, and it was upon this ground that this court held, in *Pollock* v. *Farmers Loan & Trust Co.*, 157 U. S. 429, 584, that the income tax provisions of the act of August 15, 1894, were unconstitutional in that they imposed a tax upon the income derived from municipal bonds issued under the authority of the States.

It is contended by defendant in error that the situation was changed by the admission of Oklahoma as a State, combining both the Territory of Oklahoma and the Indian Territory. This was accomplished under the Enabling Act of June 16, 1906, 34 Stat. 267, c. 3335, and was evidenced by the proclamation of the President, issued November 16, 1907. By § 4 of Art. I of the Oklahoma constitution the debts and liabilities of the Territory of Oklahoma were assumed by the State.

The argument is that at the time of making the assessment for taxes against plaintiff in error, the Indian Territory and the Territory of Oklahoma had ceased to exist as such for nearly six months, and that the bonds of the municipalities of those Territories, being the obligations of the territorial government, were by the constitution assumed by the State. There seems to be no provision of law that constitutes the bonds of the municipalities obligations of the territorial governments, and so the argument falls to the ground at once.

But we are unwilling to intimate a concession that an assumption by the State of Oklahoma of the obligation to pay these bonds would operate to deprive the bondholders of the exemption from taxation, previously enjoyed. Presumably the municipal credit was enhanced and the terms of the municipal borrowing rendered more favorable, by the understanding that the bonds, being obligations of an agency of the Federal Government, would be exempt from taxation by the several States. The value of the bonds in the market was presumably thereby in-

creased. Indeed, the state court in the present case very plainly declares (114 Minnesota, 109) that bonds of the municipalities of the Territories, if not taxable by the State, command a higher price on the market than bonds of the municipalities of the States. To deprive bonds of the former description of their immunity from state taxation, and this because of the subsequent action of Congress in erecting the Territories into a State, with or without an assumption by the new State of the obligations of the former Federal agency, would be in effect to impair the obligation of the contract; and this is so inconsistent with the honor and dignity of the United States that such an intent should not be presumed without the clearest legislative language requiring it.

It is, however, further suggested that the judgment under review does not sustain a tax upon the bonds as property, but only a tax upon the surplus of the Savings Bank, computed by taking into the account all of its assets, amounting to about $12,000,000, of which the bonds were only about $700,000, and deducting therefrom its liabilities. But as the surplus is treated as property and taxed as such, it is obvious that some portion of the burden of the tax is attributable to the ownership of the municipal bonds. In *Bank of Commerce* v. *New York City*, 2 Black, 620, it was held that the State of New York in taxing the capital of banks according to its valuation must leave out of the calculation that portion of the capital invested in the stocks, bonds, or other securities of the United States not liable to taxation by the State. And see *Bank Tax Case*, 2 Wall. 200; *Home Savings Bank* v. *Des Moines*, 205 U. S. 503, 509.

It results that the inclusion of the bonds now in question in the list of the assets of plaintiff in error, in ascertaining its surplus for the purpose of imposing a state property tax thereon, was repugnant to the Constitution of the United States.

The second Federal question arises out of the insistence of the Savings Bank that it was entitled to have omitted from the computation of its surplus for purposes of taxation certain notes held by it, amounting to about $161,000, and secured by mortgages upon Minnesota real estate, upon which mortgages a registry tax had been paid.

It appears that the Minnesota legislature, by Chap. 328, Laws of 1907, provided a registry tax upon debts secured by mortgages covering real property in the State, the amount of the tax being fifty cents upon each $100, payable at or before the filing of the mortgage for record or registration. By § 3 it was enacted that "All mortgages upon which such tax has been paid, with the debts or obligations secured thereby and the papers evidencing the same, shall be exempt from all other taxes; but nothing herein shall exempt such property from the operation of the laws relating to the taxation of gifts and inheritances, or those governing the taxation of banks, savings banks, or trust companies"; with a further proviso not now pertinent.

It was and is insisted that this section, in subjecting banks, savings banks, and trust companies to double taxation upon their mortgages covering real estate in the State of Minnesota, while at the same time relieving mortgages upon such real estate, when otherwise owned, from all taxation except the registration tax, is in contravention of the "equal protection" clause of the Fourteenth Amendment.

Although the clause limiting the exemption includes banks and trust companies, the Supreme Court of Minnesota declined to consider whether the classification was proper with respect to those institutions, and so declining dealt with the status of savings banks only. Holding that this class of institutions under other laws enjoyed privileges respecting taxation that were accorded to no other person or corporation subject to taxation, the court

held that savings banks might properly be treated as a class by themselves, and required to include such mortgages in the computation of their assets for purposes of taxation.

If there is no unconstitutional discrimination against savings banks, it is for present purposes unnecessary to inquire whether the act discriminates against other banks and trust companies. *Tyler* v. *Judges*, 179 U. S. 405, 409; *Hooker* v. *Burr*, 194 U. S. 415, 419; *Hatch* v. *Reardon*, 204 U. S. 152, 160; *Southern Railway Co.* v. *King*, 217 U. S. 524, 534; *Standard Stock Food Co.* v. *Wright*, 225 U. S. 540, 550; *Rosenthal* v. *New York*, 226 U. S. 260, 271.

The Supreme Court of Minnesota lucidly summarized the state of the law which furnished, in its judgment, a sufficient reason for the classification, as follows: "Section 839, Rev. Laws 1905, treats of savings banks, for the purposes of taxation, in a special manner. They have no capital stock, yet their property is not taxed in the same way as the property of individuals or of other corporations. By section 838 the value of the stock of corporations having capital stock is ascertained by deducting the value of the real and personal property from the market or actual value of the stock, and the amount of the difference is taxed as stocks and bonds, and the real estate and personal property are taxed in the ordinary way. Section 839 places all banks without capital stock (except savings banks), brokers, and stockjobbers in one class, and savings banks in another class. The former are taxed by ascertaining the difference between the amount of money on hand or in transit, the amount of money in the hands of others subject to draft, the amount of checks or cash items, etc., the amount of bills receivable and other credits, and from the total of these amounts the deposits and accounts payable are deducted. The balance, if any, is assessed as money under Section 835. The bonds and stocks and personal and real property are assessed sep-

arately in the ordinary way. But in the case of savings banks no specific property is taxed separately except real property. Its money, checks, bills receivable, bonds, and stocks, and all personal property appertaining to the business, are listed for the purpose of ascertaining whether there is a surplus, and the surplus is found by deducting the total of the deposits and accounts payable from the total value of the assets." 114 Minnesota, 110.

For these and other reasons pointed out in the opinion, it seems to us the court was justified in holding that there were reasonable grounds for the discrimination so far as savings banks were concerned, and that plaintiff in error had therefore not been deprived of the equal protection of the laws. In lieu of further discussion we refer to the oft quoted language employed by Mr. Justice Bradley, speaking for this court, in *Bell's Gap Railroad Co.* v. *Pennsylvania*, 134 U. S. 232, 237.

But because of the error in subjecting the bonds of the municipalities of the Territories to taxation, the judgment must be reversed, and the cause remanded for further proceedings not inconsistent with this opinion.

Judgment reversed.